United Nations CEDAW/C/BRA/1-5

# Convention on the Elimination of All Forms of Discrimination against Women

Distr.: General
7 November 2002

Original: English

**Committee on the Elimination of Discrimination against Women**

## Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women

### Combined initial, second, third, fourth and fifth periodic reports of States parties

### Brazil*

* The present document is being issued without formal editing.

02-68725 (E) 280203

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# 1. Overview

## 1.1. General Statistics and Information

Brazil is a Federative Republic formed by 26 states and a Federal District. Its area covers 8,547,403 sq. km. According to the 2000 Census taken by the Brazilian Institute of Geography and Statistics (IBGE), the country has 5,561 municipalities and a population of 169,590,693.

The population of Brazil increased nearly tenfold in the 20th century, although this increase was not uniform throughout the period. The lowest growth rates occurred in the past two decades. Between 1970 and 1980 the population increased by an average 2.48 per cent a year. In the 1980-1991 period, those figures fell to 1.93 per cent a year. According to figures in the 2000 Census, the growth rate decreased to 1.63 per cent in the past ten years. Preliminary studies indicate that this decrease in demographic growth is due mainly to the fact that fertility rates have fallen to lower levels, since the second half of the 1970s.[1] As a result of this decrease, families have become smaller and the population has become older.

An analysis of the population distribution throughout the five large regions of the country also shows that it has been uneven. The highest growth rates occurred in the Northern Region, which accounted for 5.6 per cent and 7.6 percent of inhabitants in 1980 and 2000, respectively, and in the Central Western Region, where relative participation increased from 5.8 per cent in 1980 to 6.8 percent in 2000. The three most populous regions in the country are still the Southeast, the Northeast, and the South. The Southeastern and Southern regions have maintained virtually the same relative participation since the 1950s and the Northeastern Region, which is the most populous in the country, maintains a downward trend in terms of national participation.[2]

**Table 1: Resident population by Region**

| Period | Brazil | North | Northeast | Southeast | South | Central-West |
|---|---|---|---|---|---|---|
| 2000 | 169, 590, 693 | 12, 893, 561 | 47, 693, 253 | 72, 297, 351 | 25, 089, 783 | 11, 616, 745 |
| 1991 | 146, 917, 459 | 10, 257, 266 | 42, 470, 225 | 62, 660, 700 | 22, 117, 026 | 9, 412, 242 |
| 1980 | 121, 150, 573 | 6, 767, 249 | 35, 419, 156 | 52, 580, 527 | 19, 380, 126 | 7, 003, 515 |

Source: Demographic Census. Year 2000 figures were taken from the Preliminary Synopsis.
IBGE Foundation.

[1] Synthesis of Social Indicators - 2000. Rio de Janeiro, IBGE, 2001. The overall fertility rate – the average number of children by woman at childbearing age – fell from 5.8 children in 1970 to 2.3 children in 1999.
[2] Preliminary Synopsis of the 2000 Demographic Census. Rio de Janeiro. Rio de Janeiro, IBGE, 2001.

**Table 2: Population Density – inhabitants/square kilometers**

| Period | Brazil | North | Northeast | Southeast | South | Central-West |
|---|---|---|---|---|---|---|
| 2000 | 19.92 | 3.35 | 30.69 | 78.20 | 43.54 | 7.23 |
| 1991 | 17.26 | 2.66 | 27.33 | 67.77 | 38.38 | 5.86 |
| 1980 | 14.23 | 1.76 | 22.79 | 56.87 | 33.63 | 4.36 |

Source: Demographic Census. Year 2000 figures were taken from the Preliminary Synopsis.
IBGE Foundation.

Population density recorded in the country is of 19.92 inhabitants/sq. km. 57.4 percent of the country's overall population is concentrated in the Southeastern and Southern regions, which account for just 17.6 percent of the country's total area. On the other hand, the Northern Region, where 7.6 percent of the population is concentrated, covers 45.2 percent of the country's overall area.

Figures of the latest Population Census confirm the upward trend in the urbanization level in Brazil, which increased from 67.6 percent in 1980 to 81.2 percent in 2000, with largest concentrations in metropolitan areas. According to more recent data, at present only 18.8 percent of the population lives in the rural area. The table below shows the pattern of population flow in urban and rural areas in the past twenty years.

Implementation of public policies in the fields of health, transportation and education has not been able to keep up with the fast pace of urbanization in recent decades. People in large urban centers currently face serious problems related to the lack of infrastructure in those fields, especially regarding basic sanitation. Nevertheless, some actions have led to a decrease in mortality rates and to an increase in life expectancy rates. The average mortality rate in Brazil (including all segments of the population), which was of 9 deaths per 1,000 inhabitants in 1980, fell to 7 and 6 deaths per 1,000 inhabitants in 1996 and 1998, respectively. Infant mortality rates fell from 43 to 34.6 deaths per 1,000 live births between 1992 and 1999.[3] As for maternal mortality, the estimated rates in 1999 were of 160 deaths per one hundred thousand live births.[4]

The 1990s may be characterized by significant improvements in the situation of education in Brazil.[5] In this regard, it is worth highlighting the substantial decrease in illiteracy rates,[6] which was followed by a regular increase in average education[7] and in the schooling rate[8] of the population. Notwithstanding the downward trend – from 17.2 percent in 1992 to 13 percent in 1999 – illiteracy rates in Brazil are still very high and the number of illiterate people totaled 15 million adults late in the decade.[9]

[3] Synthesis of Social Indicators - 2000. Rio de Janeiro, IBGE, 2001.
[4] World Development Indicators - 2001. World Bank.
[5] "Social Indicators" report – 2000". IBGE Foundation, May 2001.
[6] An illiterate is a person who cannot write and read a simple note in his/her mother tongue. This indicator refers merely to population in age group 15 and up that cannot read and write.
[7] Education is measured in terms of average school years.
[8] The schooling rate is defined as the percentage of school-age children that are enrolled in primary education.
[9] Synthesis of Social Indicators - 2000. Rio de Janeiro, IBGE, 2001.

In 1996[10] Brazil joined the group of countries with a High Human Development Index (HDI) according to criteria set by the United Nations Human Development Program (UNDP).[11] In that year, Brazil had a HDI of 0.809 and ranked 62nd in a group of 174 countries.[12] Nevertheless, in 1999 changes introduced in criteria for income assessment brought Brazil back to the group of countries with Average Human Development Indexes. Brazil then fell to 79th place, with a HDI of 0.739. In 2000, the country held 74th place. The report published in July 2001 indicated that Brazil ranked 69th among those countries.

In 1999, the country's GDP stood at US$ 730.4 billion and the per capita income was estimated at US$ 4.350.[13] Nevertheless, if on the one hand these figures place Brazil among the ten richest countries in the world, on the other they fail to show the huge disparity that exists in income distribution. The tables below present indicators that show this dissimilarity, as well as the percentage of the Brazilian population that lives in a state of poverty and its variations, from one region to another.

**Table 3: Income Ratio**
Number of times when the income of the richest 20 percent of the population exceeded that of the poorest 20 percent, By Large Regions, Brazil – 1997/1999

| Region | 1997 | 1998 | 1999 |
|---|---|---|---|
| North | 16.06 | 16.20 | 14.96 |
| Northeast | 19.30 | 17.38 | 17.61 |
| Southeast | 18.49 | 17.61 | 16.41 |
| South | 16.57 | 16.26 | 16.15 |
| Central-West | 19.05 | 18.14 | 17.54 |
| Total | 18.93 | 18.06 | 17.36 |

**Source**: IBGE/Nationwide Survey by Household Sampling (PNAD);
Basic Data Indicators (IDB) –2000 - Datasus/Health Minister.

[10] 1995 data.
[11] The United Nations Development Program (UNDP) has published reports on Human Development since 1990. The objective of the report is to assess the quality of life of the population in 174 countries that participate in the survey. The Economic Development Index comprises three indicators: per capita income, longevity – expressed through life expectancy at birth - and educational level – assessed through the literacy and illiteracy variables. The assessment scale varies between 0 and 1. Countries with HDI below 0.500 are considered as having low human development rates. Those with indexes between 0.500 and 0.799 have average human development rates, whereas countries with HDI above 0.800 are considered as having high human development rates.
[12] This index stood at 0.787 and 0.734 in 1991 and 1998, respectively.
[13] *World Development Indicators* - 2001. World Bank.

**Table 4: Percentage of the population that lives in a state of poverty,[14] by region**

| Region | 1997 | 1998 | 1999 |
|---|---|---|---|
| **North** | 34.49 | 35.43 | 34.85 |
| **Northeast** | 52.19 | 49.67 | 50.15 |
| **Southeast** | 16.00 | 16.25 | 16.78 |
| **South** | 19.07 | 18.68 | 19.84 |
| **Central-West** | 22.59 | 21.96 | 23.64 |
| **Total** | 28.40 | 27.73 | 28.36 |

**Source**: IBGE/Nationwide Survey by Household Sampling (PNAD); Basic Data Indicators (IDB) –2000 - Datasus/Health Ministry.

With regard to religion, the country is predominantly Christian, with some 75 percent of Catholics and 14 percent of Protestants. Nevertheless, it is worth mentioning that religious syncretism is strongly practiced in the country, with a marked influence of African religions such as *umbanda* and *candomblé* (Afro-Brazilian religions that mix teachings of Alan Kardec's spiritualism, Catholicism, and sects brought into the country by African slaves). Therefore, the fact that a person declares him or herself Catholic does not exclude the concomitant attendance at other cults (DataFolha, 1995).

### 1.2. Specific Statistics and Information

The Brazilian population is formed chiefly by women, mostly living in urban areas.

**Table 5: Evolution of the Resident Population by gender - 1980-1999**

| Year | Total | Men | % | Women | % |
|---|---|---|---|---|---|
| **1980** | 119,002,706 | 59,123,361 | 49.68 | 59,879,345 | 50.32 |
| **1991** | 146,825,475 | 72,485,122 | 49.37 | 74,340,353 | 50.63 |
| **1999** | 160,336,471 | 78,470,936 | 48.94 | 81,865,535 | 51.06 |

**Source**: IBGE – 1980 and 1991 Population Census and 1999 PNAD.

Much has been said about the huge gap between the formal declaration of rights and the actual exercise of citizenship. In Brazil, the perspective of universal rights, which preaches equality for all – men and women, whites and non-whites – before the law, has not been enough for the Brazilian legal system to consolidate, in practice, the desired equity. Inequality is to be seen in the socio-economic data about the Brazilian population. When analyzed in the light of

[14] As for the term "state of poverty", in the 1996 PNAD IBGE defines it as the "portion of the population with a per capita household income of up to half a minimum wage".

indicators such as race/ethnicity and gender, these differences gain new contours and inequalities are enlarged, especially if one considers the situation of historically excluded groups such as black and Indigenous women.

In such a scenario, the consolidation of social and gender equity requires a reconciliation between the universal principle of equality and the recognition of the specific needs of groups that have been historically excluded and culturally discriminated against.

Since 1995, when the World Conference on Women was held in Beijing, the United Nations Development Program (UNDP) has published the Gender Development Index (GDI), which measures inequities between men and women in different countries. Social indicators in each country are therefore now being re-calculated so as to include the GDI. As a result of the inclusion of gender differences into social indicators, we see that:[15]

- No society treats women as well as it treats men. (HDR 1996 and 1997);
- The comparison of the countries' HDI classification with their income levels confirms the fact that elimination of gender inequalities does not depend on high income levels (HDR 1996, 1997, and 1999);
- Gender equality is not necessarily associated with high economic growth, thereby suggesting that other decisive factors also contribute to raise the HDI; and
- Gender inequality is strongly related to human poverty (HDR, 1997).

According to data from the Brazilian Institute of Geography and Statistics (IBGE), 54 percent of the Brazilian population declares itself White, and 45.4 percent declares itself black or mulatto – a synonym for Afro-descendants. The Afro-Brazilian population is one of the largest in the world, second only to the population of Nigeria, the highest densely populated country in Africa. In 1999 it corresponded to 73 million people, who live mainly in the Northeastern Region. Also worth mentioning is the huge number of Afro-descendants who live in the Southeast, although with less relative weight in the population of the region.[16]

**Table 6: Brazil – Population by race or color according to gender - 1999**

| Color or race/Gender | Men | Women | Total |
|---|---|---|---|
| White | 41,581,723 | 45,044,996 | 86,626,719 |
| Afro-Brazilian | 4,327,951 | 4,317,555 | 8,645,506 |
| Mulatto | 32,063,740 | 31,979,310 | 64,043,050 |
| Asian | 359,991 | 382,381 | 742,372 |
| Indigenous | 127,397 | 134,343 | 261,740 |
| Undeclared | 10,134 | 6,950 | 17,084 |
| Total | 78,470,936 | 81,865,535 | 160,336,471 |

**Source**: IBGE/ PNAD - Nationwide Research by Household Sampling - 1999.

[15] The considerations that follow are based on t study performed by Wânia Sant'Anna (2001).
[16] About 25 million Afro-descendents lived in the Southeastern region in 1999.

Several studies indicate that the intersection of category race/color with other categories such as gender and social class show strong contrasts in the lives of men and women, white and black, rich and poor, in Brazilian society. These contrasts occur transversally in the spheres of social life, reflecting on the access to education, health, quality of life (basic sanitation, water, sewage), inclusion into the labor market, access to information, justice and citizenship. Therefore, when the race/ethnicity variable is added to the GDI, differences become even more visible. White men rank 41st, whereas Afro-descendants rank 104th – i.e., 63 points lower. On the other hand, while white women rank 69th, the Afro- descendants are 45 points below, in the 114th position – the lowest index among all the four groups.[17] In the light of these differences, the Brazilian population has been characterized according to its specificities in terms of the gender and race/ethnicity situation.

Based on an analysis performed by the Institute of Applied Economic Research (IPEA), in the year 1999 about 34 percent of the Brazilian population lived in households with an income below the poverty line, and 14 percent in households with income below the extreme poverty line.[18] The table below shows that among the poor there is an over-representation of Afro-descendants in all age groups.

**Table 7: Brazil – Racial Composition of Poverty and Extreme Poverty, 1999 (%)**

| | Afro-descendants | White |
|---|---|---|
| **Total** | 45 | 54 |
| **Poor** | 64 | 36 |
| **Extremely poor** | 69 | 31 |

In absolute numbers, there are 53 million poor Brazilians, 33.7 million of which are of African descent. There are also 22 million Brazilians living in a situation of extreme poverty, 15.1 million of which are of African origin. Afro-descendants therefore account for 70 percent of the country's poorest 10 percent.

As for life expectancy, women and men of African descent live five and six years less, respectively, as compared with the life expectancy of white women, which is of 71 years.[19] The life expectancy of Afro-Brazilians is of 64 years – six years less than that of white people. A recent study performed by the SEADE Foundation[20] in 1995 on deaths in the municipality of São Paulo, shows that 40.7 percent of Afro-Brazilian women die before age 50.

Likewise, the difference between Afro-descendant and white children in Brazil is still very high with regard to infant mortality and mortality among children under 5 years of age. There are also discrepancies in mortality rates between the children born to Afro-descendant and white women in the same socio-economic standard in the first year of life.[21]

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[17] SANT'ANNA, Wânia. Ethnical/racial and gender inequalities in Brazil – The possible disclosures of Human Development Indexes and Development Index adjusted to Gender, Proposal, no. 88/89, March – August 2001, page 23.

[18] The extreme poverty line refers to the costs of basic foodstuff defined by region, which meets the minimum supply of calories to an individual, while the poverty line includes, in addition to food expenditures, minimum individual expenditures on clothing, housing, and transportation. See Henriques, Ricardo. "Racial Inequality in Brazil: Evolution of Living Conditions in the 1990s". IPEA, text for discussion no. 807. Rio de Janeiro, July 2001.

[19] According to calculations by demographer Juarez de Castro Oliveira, from the IBGE Foundation.

[20] Barbosa, Maria Inês da S. ,"She is a Woman, but she is Black: a profile of mortality in the 'rubbish room'". RedeSaúde Journal no. 23.

[21] See "Black Women: A Picture of Racial Discrimination in Brazil". Mobilization of Brazilian Women. Brasilia, May 2001.

**Table 8**

**Infant Mortality per 1,000 live births according to the mother's skin color – Brazil**

| Year | White | Afro-descendants | Total |
|---|---|---|---|
| 1977 | 76 | 96 | 87 |
| 1987 | 43 | 72 | 58 |
| 1993 | 37 | 62 | 37 |

Total: indirect estimate based on information provided by white and black women.
**Source**: IBGE, Demographic Censuses, 1980 and 1991; Nationwide Survey by Household Sampling, 1995; and special Tabulations, NEPO/UNICAMP.

Considering the Brazilian population as a whole, many achievements may be noticed in the 1990s. For example, in the field of education the decrease in illiteracy rates and the rise in average schooling are extremely important. According to data from the 1999 PNAD, the average number of school years in age group 10 years and over is of 5.9 years among women and 5.6 among men. Nevertheless, despite the progress achieved, the level of educational disparity between Afro-descendant and white populations remains unchanged. Illiteracy rates in 1999 stood at some 20 percent among Afro-descendants and 8.3 percent among the white. Functional illiteracy[22] reached about 40 percent of the Afro-descendant population and 21 per cent of the white population in age group 15 years and older.

**Table 9 – Education rates by gender and skin color according to age groups.**

**From March 1996 to March 1997 (%).**

| Age Group | Gender | | Skin Color | |
|---|---|---|---|---|
| | Men | Women | White | Afro-descent |
| 0 to 6 years | 27.7 | 27.7 | 31.9 | 23.5 |
| 7 to 9 years | 91.6 | 90.7 | 95.6 | 86.8 |
| 10 to 14 years | 91.8 | 92.2 | 95.1 | 89.0 |
| 15 to 17 years | 74.1 | 75.3 | 80.1 | 69.4 |
| 18 to 24 years | 28.6 | 30.3 | 31.0 | 27.8 |
| 24 years or over | 1.9 | 2.7 | 2.7 | 1.8 |

**Source**: 1996-1197 Survey on Living Standards [CD-ROM]. Microdata. IBGE, 1998.

[22] People with less than four years of formal education.

If on the one hand the "average school years" indicator showed signs of growth in the 1990s – the recorded increase was of about one additional school year for the population at large – on the other hand the average of two years of education that separate, Afro-descendants from the white still persist. The situation of Afro-Brazilian women is even more unfavorable in the field of education, despite their increasing enrollment in universities.[23]

**Table 10: Employed population by economic sector and gender – Brazil 1997**

| Sector | Men % | Women % | Total |
|---|---|---|---|
| **Agriculture** | 26.8 | 20.2 | 24.2 |
| **Transformation Industry** | 14.5 | 8.8 | 12.3 |
| **Construction Industry** | 10.7 | 0.4 | 6.6 |
| **Other Industrial Activities** | 1.6 | 0.4 | 1.1 |
| **Trade in Goods** | 13.4 | 13.2 | 13.3 |
| **Provision of Services** | 12.4 | 30.2 | 19.4 |
| **Support Services to the Economic Activity** | 3.8 | 3.2 | 3.6 |
| **Transportation and Communications** | 6.0 | 0.9 | 4.0 |
| **Social** | 3.9 | 17.2 | 9.1 |
| **Public Administration** | 5.0 | 3.9 | 4.5 |
| **Other Activities** | 1.9 | 1.7 | 1.8 |
| **Total (1)** | **100.0** | **100.0** | **100.0** |

**Source**: IBGE. PNAD – Map of Gender Issues. Prepared by: DIEESE - Labor Ministry
**Note**: (1) Rural population in the Northern states of Rondônia, Acre, Amazonas, Roraima, and Amapá not included.

According to data published by the Labor Ministry (Annual List of Social Information – RAISD) for 1997, out of the overall 241 million employments 62.7 percent were held by men. Men earn 5.9 minimum wages on the average, while women earn 4.6 minimum wages. Data also point out that salaries earned by women are always lower than those earned by men, regardless of their educational level or the activity sector to which they belong. As an example, in 1997 male wage earners with a university degree earned 17.3 minimum wages on the average. Among women in the same situation, the average was 10.1 minimum wages.

[23] "Despite the disparities that affect the population in the field of education, the enrollment of black women in higher education institutions increased three times more than that of White women between 1960 and 1980: 7.33 and 2.53 times, respectively." Source: P. Lovell, "Race, Class, Gender, and Salary Discrimination in brazil"; in "Black Women: A Picture of racial Discrimination in Brazil". Mobilization of Brazilian Women. Brasilia, May 2001.

Despite these salary differences, about 26 percent of all households in Brazil are headed by women. The highest level occurs in the Northern Region, where 29.5 percent of the households are headed by women.

The above mentioned statistics and information on the situation of women in Brazil lead us to say that, notwithstanding the equality formally prescribed by the Brazilian legal system, an actual concrete situation of inequality persists that will have to be faced.

**1.3 Brazil and the Protection of Human Rights at international level**

The International Law on Human Rights is a recent movement in history that emerged in Post-War years as an answer to the atrocities of Nazism. And it was in that very scenario that the effort to rebuild human rights as a paradigm and ethical benchmark to guide the contemporary international system was developed.

One of the main concerns of that movement was converting human rights into a theme of legitimate interest to the international community. As Norberto Bobbio points out, human rights are born as natural universal rights; they, are developed as positive private rights (when each Constitution embodies Declarations of Rights), and finally achieve their full consolidation as positive universal rights.[24] In view of the increasing consolidation of this universal positivism, it may be stated that international treaties on the protection of human rights call upon, especially, the contemporary ethical awareness shared by States, to the extent that they celebrate international consensus on themes that are central to human dignity.[25]

The process of making human rights universal enabled the development of an international normative system of protection at global and regional level, as well as within general and specific scope. Based on the value of primacy of the human person, these systems complement one another, interacting with the national protection system, so as to ensure the greatest effectiveness possible in the defense and promotion of fundamental rights.

By accepting the international apparatus of protection and the international obligations arising from it, a State also accepts international monitoring with regard to the way human rights are respected in its territory. The international instruments for the protection of human rights, therefore, take on double importance: consolidating minimum international parameters regarding the protection of human dignity; and ensuring an international forum for the protection of rights whenever national institutions fail or neglect to do so.

It is worth emphasizing that on the international plane, the first stage of human rights' protection was marked by general, generic, and abstract protection based on formal equality. This approach expressed the fear that prevalence of inequalities could serve as a justification for the extermination and destruction of a people, such as was the case in Nazi Germany. Examples of the approach based on formal equality are the Declaration of 1948, as well as the Convention for the Prevention and Repression of Genocide, also from 1948, which punishes the rationale of intolerance, based on the destruction of the "other" by reason of his/her nationality, ethnicity, race, or religion.

Nevertheless, treating the individual in a generic, general, and abstract way will not suffice. It will be necessary to specify the subject of rights, who will then be seen on the basis of his/her peculiarities and particularities. From this perspective, certain subjects of rights, or certain violations of rights demand a specific and differentiated answer. In this context, we switch from the paradigm of the Western, adult, heterosexual man who owns property, to the visibility of new subjects of rights. Thus the need to confer on certain groups protection that is special and specific,

[24] Norberto Bobbio, Era of Rights, translated by Carlos Nelson Coutinho, Rio de Janeiro, Campus, 1988, p.30.

[25] In this regard, it is worth mentioning that by June 2001, the International Pact on Civil and Political Rights had been ratified by 147 States; the International Pact on Economic, Social, and Cultural Rights by 145 States; the Convention Against Torture and other Cruel, Inhuman, and Degrading Treatments by 124 States; the Convention on the Elimination of All Forms of Racial Discrimination by 157 States; the Convention on the Elimination of All Forms of Discrimination Against Women by 168 States; and the Convention of the Rights of the Child by 191 States. In this regard, see the Human Development Report 2001, UNDP, New York/Oxford, Oxford University Press, 2001.

in the light of their vulnerability. This means that the difference would no longer be used to annihilate rights, but rather to promote them.

What we have, then, within the scope of the global system, is a consolidation of the coexistence of the general system with the special system of human rights' protection, which complement one another. The special protection system emphasizes the process of specification of the subject of rights, in which the subject is seen on the basis of his/her specific and concrete aspects (ex: women, children, minority ethnical groups, indigenous peoples, refugees, etc.). The general protection system, on the other hand, is aimed at each and every person, conceived in his/her abstraction and generality.

It was in this scenario that the United Nations approved, in 1967, the Declaration on the Elimination of Discrimination against Women, which introduced a new paradigm in the discrimination against women as a cause of human rights violation worldwide. In 1972 the UN General Assembly proclaimed 1975 as the International Year of Women, to be marked by the First World Conference on Women. Preparatory work for the Convention on the Elimination of All Forms of Discrimination Against Women started in 1974 for, as the Declaration had no mandatory character, it would be necessary to adopt a binding international instrument that was capable of defining legal duties for Member States, and rights for citizens.

On 18 December 1979, following five years of hard work, with the decisive participation of women and groups of civil society, the UN General Assembly considered and approved, by means of resolution 34/180, the text of that Convention. In September 1981, after the 20th instrument of ratification had been deposited, the Convention was enforced.

The Convention currently counts on the participation of 165 States-parties, including Brazil, which ratified it in 1984. It is the international human rights instrument that had the highest number of reservations made by States.[26] It is worth recalling that Brazil itself made reservations to article 15, paragraph 4, and article 16, paragraph 1 (a), (c), (g), and (h) of the Convention. Nevertheless, on 20 December 1994, the country withdrew its opposition to such articles.[27] Special mention should be made to the fact that the Conference on Human Rights, held in Vienna in 1993, reaffirmed the importance of universal recognition of the right to gender equity, by urging the universal ratification of the *Convention on the Elimination of All Forms of Discrimination Against Women*[28] and encouraging all States-parties to withdraw reservations that are contrary to the object and purpose of the Convention, or which are incompatible with international treaty law.

It is also worth recalling that the Human Rights Declaration of Vienna, in paragraph 18, proclaims the human rights of women and girls as an inalienable, integral, and indivisible part of universal human rights. This concept was reiterated by the 1995 Action Platform of Beijing.

The preamble to the Convention on Elimination of All Forms of Discrimination Against Women points out that "discrimination against women violates the principles of equality of rights and respect for human dignity, is an

[26] In fact, at least 23 of the more than 100 Member States made a total of 88 substantial reservations. The Convention on the Elimination of All Forms of Discrimination Against Women might face the paradox of having maximized its universal enforcement at the expense of its integrity.

[27] Article 15 ensures men and women the right to freely choose their domicile and place of residence. Article 16, on the other hand, provides for equal rights between men and women within the scope of marriage and family relations. On 20 December 1994 Brazil informed the Secretary-General of the United Nations that it was withdrawing its reservations.

[28] Article 39 of the Vienna Declaration provides that: "The World Conference on Human Rights urges the eradication of all forms of discrimination against women, both hidden and overt. The United Nations should encourage the goal of universal ratification by all States of the Convention on the Elimination of All Forms of Discrimination Against Women by the year 2000. Ways and means of addressing the particularly large number of reservations to the Convention should be encouraged. Among other measures, the Committee on the Elimination of Discrimination Against Women should continue its review of reservations to the Convention. States are urged to withdraw reservations that are contrary to the object and purpose of the Convention or which are otherwise incompatible with international treaty law".

obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and family, and hinders the full development of the potentialities of women in the service of their country and of humanity". It also emphasizes the need for urgency in the adoption of all necessary measures to eliminate discrimination against women, in all of its forms, by stating that "the full and complete development of a country, the welfare of the world and the cause of peace require maximum participation of women on equal terms with men in all fields".

The Convention imposes a double obligation on States-Parties: eliminating discrimination and ensuring equality. The Convention therefore proclaims two different approaches: a) the repressive-punitive approach (prohibition of discrimination); and b) the positive-promotional approach (promotion of equality).

As far as monitoring is concerned, it is worth emphasizing that the *Convention on the Elimination of All Forms of Discrimination Against Women* introduces only the systematics for national reports. Under article 18 of the Convention, the Committee on the Elimination of Discrimination against Women is responsible for examining the reports submitted by States-Parties, which should include the legislative, judicial, or administrative measures which have been adopted to bring into effect the provisions of the Convention, as well as to mention the difficulties faced in that process.

The Optional Protocol to the *Convention on the Elimination of All Forms of Discrimination Against Women* was adopted in 1999, on the occasion of the 20th anniversary of the Convention. The Protocol establishes two follow-up mechanisms: a) the right to submit to the consideration of the Committee communications regarding a violation of any of the rights set forth in the Convention; and b) an investigation procedure, which qualifies the Committee to investigate the existence of serious and systematic violations of the human rights of women. Brazil ratified the *Convention on the Elimination of All Forms of Discrimination Against Women* on 1st February 2001, and signed the Optional Protocol on 13 March 2001. This is the first report submitted by this country to the consideration of the Committee under article 18 of the Convention.

Brazil has also ratified relevant international treaties on the protection of human rights which endorse the obligation to ensure equity and forbid discrimination, so that human rights may be enjoyed to the fullest.

In fact, since the country's return to democracy and particularly after the Federal Constitution of 1988, Brazil has taken important measures towards the adoption of international instruments intended to protect human rights. Among the international human rights treaties ratified by Brazil are:

a) *Convention on the Elimination of All Forms of Discrimination Against Women* , ratified on 1st February 1984;

b) Inter-American Convention to Prevent and Punish Torture, ratified on 20 July 1989;

c) Convention Against Torture and Other Cruel, Inhuman and Degrading Treatments, ratified on 28 September 1989;

d) Convention on the Rights of the Child, ratified on 24 September 1990;

e) International Pact on Civil and Political Rights, ratified on 24 January 1992;

f) International Pact on Economic, Social and Cultural Rights, ratified on 24 January 1992;

g) American Convention on Human Rights ("San José Pact"), ratified on 25 September 1992;

h) Inter-American Convention to Prevent, Punish and Eradicate Violence Against Women ("Belém do Pará Convention"), ratified on 27 November 1995;

i) Protocol to the American Convention on the Abolishment of the Death Penalty, ratified on 13 August 1996; and

j) Protocol to the American Convention on Economic, Social and Cultural Rights ("San Salvador Protocol"), ratified on 21 August 1996.

Despite their specific objectives in the field of human rights, all above mentioned international instruments share the common objective of ensuring the value of equity, by imposing on States - Parties the obligation to ensure the free and full enjoyment of human rights, without any form of discrimination. It is worth mentioning that, according to the National Human Rights Program, the Executive Branch is responsible for promoting the broad dissemination of the international treaties which have been ratified by Brazil. This has been done through publications, debates, seminars and training courses provided by the Public Administration in partnership with civil society organizations.

In addition to having ratified these international treaties, Brazil also recognized the jurisdictional competence of the Inter-American Human Rights Court, through Legislative Decree nº. 89 of December 3rd, 1998. Brazil also signed, in February 2000, the Statute of the International Penal Court, which had been approved in Rome in July 1998.

**1.4 The Protection of Human Rights at national level**

This is the first report that Brazil submits to the consideration of the Committee on Discrimination Against Women.

Within a normative scope, this report is based fundamentally on the Federal Constitution of 1988, on State-level Constitutions, and on the statutory law adopted in fulfillment of the 1988 Charter. This normative scenario, with emphasis on those provisions meant to ensure equity and combat discrimination against women at national level, is examined below.

**The Federal Constitution**

After a period of 21 years of military dictatorship, which lasted from 1964 to 1985, a process for democratization was launched in Brazil. Throughout the authoritarian regime, the most basic rights and freedoms had been suppressed. The Armed Forces, acting as an institution, took direct control over governmental functions, promoting a merger between the military and Power.

The year of 1985 marked the start of a process of slow and gradual transition towards Democracy. Civil society became stronger by the adoption of new forms of organization, mobilization, and dialogue, which ensured important social and political achievements. New social actors and new social movements emerged, with their claims and demands which reinforced the democratization of Brazil.

The slow and gradual transition to democracy rendered possible the development of civil control over the military forces. Besides, it demanded the definition of a new code that would reshape the social-political pact. This process led to the promulgation of a new constitutional order – the Brazilian Constitution of 5 October 1988.

The Constitution of 1988 is the legal landmark of democratic transition and institutionalization of human rights in the country. The Charter underscored the rupture with the authoritarian military regime established in 1964 and reflected the democratic consensus of the "post-dictatorship" years. Coming after 21 years of authoritarian regime, the Constitution was aimed at recovering the Rule of Law, separation of Government Powers, the Federation, Democracy, and fundamental rights based on the principle of human dignity.

The Constitution of 1988 includes, among its fundamental principles, the definition of a Democratic Rule of Law and reinforces the federative principle and the principle of separation of the Powers. The Constitution was meant to strengthen democracy on the basis of Participatory Democracy, by establishing mechanisms of direct community participation (such as by means of plebiscite, referendum, and popular initiative, as provided for in art. 1, sole paragraph and art. 14), and the right to organic and community participation (art. 10 and 11, art. 194, subsection VII, and art. 198, subsection. III).

As for the principle of separation of governmental Powers, the Charter prescribes independence and harmony among the Legislative, Executive, and Judicial Powers and defines their respective competence. In addition to political decentralization within an organic scope, by adopting the federative principle, the constitutional text also endorses the political decentralization of power in a spatial geographic sense. It defines a Central Government, States, Municipalities, and the Federal District as autonomous federative entities.

It is worth mentioning that article 60, paragraph 4, items I to IV, the Constitution of 1988 establishes as an "inviolable clause" – its intangible material core – the federative form of State, the separation of governmental Powers, the direct, secret, universal and periodic ballot, and individual rights and gu rantees.

The constitutional text represents an extraordinary progress towards the consolidation of fundamental rights and guarantees and is the most comprehensive and detailed document on the matter in the country's constitutional history.

In its article 1, item III, the Charter of 1988 defines the value of human dignity as the basic and informative core of the Brazilian legal system, and as a criterion and parameter that guide the understanding of the constitutional system introduced in 1988. Human dignity and the fundamental rights and guarantees gain special and greater strength, are spread throughout the constitutional scenario, and serve as a criterion to construe all the norms of the national legal system.

In this context, the Charter of 1988 introduces extremely significant innovations in the plane of international relations, as provided for in article 4, items I to X. If one the one hand this constitutional provision reproduces the old concern from Empire days about national independence and non-intervention, as well as the republican ideals aimed at the defense of peace, on the other hand it innovates by emphasizing an internationalist orientation that was unprecedented in the constitutional history of Brazil. This internationalist outlook is translated into the principles of prevalence of human rights, self-determination of peoples, repudiation of terrorism and racism, and cooperation among peoples for the progress of mankind (items II, III, VIII, and IX of article 4).

By breaking away with the system of previous charters, the Constitution of 1988 establishes, in an unprecedented manner, the primacy of respect for human rights as a paradigm advocated by the international order. This principle urges the opening of the internal legal order to the international system of human rights' protection. If to Brazil the prevalence of human rights is a principle that should govern its relations in the international scene, the country consequently accepts the idea that human rights are a theme of legitimate concern and interest to the international community. In this sense, human rights emerge in the Charter of 1988 as a global theme.

In an also unprecedented way, the Charter of 1988 establishes, at the end of the long Declaration of Rights contained in its article 5, items I to LXXVII, that "the rights and guarantees expressed in this Constitution do not exclude others deriving from the regime and from the principles adopted by it, or from the international treaties in which the Federative Republic of Brazil is a party" (article 5º, paragraph 2). The Charter of 1988 thereby innovates by including, among the constitutionally protected rights, the rights contained in the international treaties to which Brazil is a party. By so doing, the Charter accords to international rights a special and differentiated kind of hierarchy, i.e., the hierarchy of constitutional rules.[29]

The Charter of 1988 also embodies the principle of immediate applicability of the provisions defining fundamental rights and guarantees under the terms of article 5, paragraph 1.

[29] There is great doctrinal and jurisprudential divergence regarding the hierarchy of the treaties on human rights protection in Brazil. The four existing trends sustain that: a) the supra-constitutional hierarchy of human rights treaties; b) the constitutional hierarchy; c) the supra-legal although infra-constitutional hierarchy of those treaties; and d) the hierarchic parity between the treaty and the federal law (position adopted by the Federal Supreme Court in its majority).

In assessing the women's movement, an important moment in the defense of the human rights of women was the dialogue established throughout the pré-1988 period, which was intended to help attain achievements within constitutional scope. This led to the conception of the "Charter of Brazilian Women to the Members of the Constituent Assembly", which included the major demands of the women's movement, based on broad nationwide discussions and debates. As a result of the competent mobilization of the movement during the activities of the Constituent Assembly, a significant majority of the claims made by women were incorporated into the constitutional text of 1988.

The success of the women's movement concerning constitutional gains may be clearly seen in the constitutional provisions, which ensure them, among other rights:

a) Equal rights for men and women in general (article 5, I) and specifically within the family (article 226, paragraph 5);

b) Prohibition of discrimination in the labor market by reason of sex, age, color or marital status (article 7°, XXX, regulated by Law 9,029, of 13 April 1995, which prohibits the requirement of pregnancy and sterilization certificates, as well as other discriminatory practices for the purpose of admission into the labor market or continuation of legal labor relations);

c) The protection of the labor market for women through specific incentives (article 7, XX, regulated by Law 9,799, of 26 May 1999, which includes in the Labor Code rules for women's access to the labor market);

d) The right of female prisoners to have their children with them in the nursing period (article 5, L);

e) The protection of motherhood as a social right (article 6), by ensuring maternity-leave without the loss of job and salary, for a period of 120 days (article 7, XVIII);

f) The title-deed and the concession of use of rural property through agrarian reform to the man or the woman, or to both, irrespective of their marital status (article 189, sole paragraph);

g) Family planning as a free choice of the couple, it being within the competence of the State to provide educational and scientific resources for the exercise of this right (article 226, paragraph 7, regulated by Law 9,263, of 12 January 1996, which provides for family planning within the scope of global and full health care); and

h) The duty of the State to suppress violence within the family (article 226, paragraph 8).

The Brazilian Constitution is therefore fully in tune with the international parameters accepted by Brazil as a result of the ratification of the *Convention on the Elimination of All Forms of Discrimination against Women* and reflects both the punitive-repressive approach (prohibition of discrimination), and the promotional approach (promotion of equality).

It is worth mentioning that the progress attained in the international plane has ensured domestic changes as well. In this regard, special mention should be made to the influence of instruments such as the 1979 *Convention on the Elimination of Discrimination against Women*, the 1993 Vienna Declaration and Program of Action on Human Rights, the 1994 Cairo Conference on Population and Development, the 1994 Inter-American Convention to Prevent, Punish and Eradicate Violence against Women, and the 1995 Beijing Platform for Action and Declaration. These international instruments encouraged the women's movement to demand, at local level, implementation of the progress attained at international level.

Notwithstanding the significant advances achieved on the constitutional and international planes – which have at times been reinforced by sparse infra-constitutional legislation – some provisions of the Civil Code of 1916[30] and of

[30] It is worth mentioning, nevertheless, that Law no. 10,406 of 10 January 2002, which creates the New Civil Code to come into force on 11 January 2003, introduces substantial changes, such as absolute equality between spouses through the elimination of the "paternal power", which thereinafter will be called "family power", and the use of the term "human being", which replaces the generic Word "man".

the Penal Code of 1940 still reflect a sexist and discriminatory perspective in relation to women.[31] Socio-juridical analyses and research developed, from a gender standpoint, by female scholars with a legal background indicate that a discriminatory jurisprudence still exists, which, based on a dual morality approach, assigns different weights to and makes different evaluations of the behavior of men and women.[32] Thus the urgency to sponsor a legal doctrine supported by compliance with the international and constitutional parameters of protection of the human rights of women, which prescribe a democratic and equalitarian perspective in relation to gender.

**Federal legislation**

In addition to the significant advances arising from the Constitution of 1988 and from the adoption by the State of the international set of rules for the protection of human rights, after 1988 Brazil witnessed the largest production ever of rules related to the protection of human rights in its legislative history. It might be said that the majority of rules on human rights protection – construed as the exercise of civil, political, social, economic, and cultural rights – has been developed as a follow-up to and has been inspired by the Constitution of 1988. In this regard, special mention should be made of the following normative acts:

a) Law 7,716 of January 5th, 1989 – Defines race- and color- prejudice-related crimes and establishes that racism is a non-bailable and imprescriptible crime (before the Constitution of 1988, racism was considered a mere penal offense);

b) Law 8,069 of July 13th, 1990 – Provides for the Statute of the Child and the Adolescent and is regarded as one of the most advanced laws of its kind in the world, by establishing full protection to the child and the adolescent;

c) Law 9,140 of December 4th, 1995 – Recognizes as deceased, people who have disappeared by reason of their participation in political activities from 2 September 1961 to 15 August 1979, and defines the responsibility of the State for such deaths, providing compensation to the victims' relatives;

d) Law 9,265 of February 12th, 1996 – Regulates item LXXVII of article 5 of the Federal Constitution by providing for the gratuity of acts necessary for the exercise of citizenship;

e) Decree 1,904 of May 13th, 1996 – Creates the National Human Rights Program, an unprecedented initiative which assigns to human rights the status of governmental public policy, and contains proposals of governmental actions aimed at protecting and promoting civil and political rights in Brazil;

f) Law 9,299 of August 7th, 1996 – Provides for the transfer of the trial of felony against life committed by the military police, from the Military Court to the Courts of Law;

g) Law 9,455 of 7 April 7th, 1997 – Defines and punishes crimes of torture as non-bailable crimes and as non-susceptible to mercy or amnesty, and for which instigators, perpetrators and those who, albeit their ability to prevent them fail to do so are to be accountable under the terms of article 5, XLIII of the Constitution of 1988;

h) Law 9,807 of July 13th, 1999 – Establishes rules for the organization and maintenance of special programs for the protection of victims and witnesses under threat, and creates the Federal Program of Assistance to Victims and Witnesses under Threat.

As for the human rights of women, special mention should be made to the following acts, according to a survey performed by CFEMEA:

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[31] As an example, it should be enough to mention articles 233, 247, 219, 380, 1744, "c", II of the Civil Code, in addition to the provisions of the Penal Code, which also adopt the same discriminatory approach in relation to women, as we will be analyzing throughout this report.

[32] In this regard, it is worth emphasizing studies such as "A Figura/Personagem Mulher em Processos de Família" ("The Woman Figure/Character in Family Processes"), by Silvia Pimentel, Beatriz Di Giorgi and Flavia Piovesan, 1993; "Estupro: Crime ou Cortesia? Abordagem sociojurídica de gênero." (Rape: Crime or Courtesy: A Socio-juridical Approach to Gender"), by Silvia Pimentel, Ana Lucia P. Schritzmeyer and Valéria Pandjiarjian, 1998. Also worth mentioning is the collection "As Mulheres e os Direitos Civis" ("Women and Civil Rights"), which is being published by CEPIA – Citizenship, Study, Research, Information, and Action, with the support of UNIFEM, FNUAP, the Ford Foundation, and the European Commission, which currently counts on 3 volumes gathering different papers on the topic.

## TABLE OF ACTS PROVIDING FOR THE GUARANTEE OF RIGHTS TO WOMEN (APPROVED DURING THE POST-CONSTITUTION PERIOD)[33]

| NO./DATE | SUMMARY | OBSERVATION |
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| **1- Law 8,009 of March 29th, 1990** | Provides for the non-seizure of homestead. | |
| **2- Law 8,212 of July 24th, 1991** | Provides for the organization of Social Security and **creates Costing** Plan, among other things. | Guarantees to female beneficiaries of Social Security the payment of the maternity allowance. |
| **3- Law 8,213 of July 24th, 1991** | Provides for Social Security Benefit Plans, among other things. | Regulates, among other things, the constitutional rights of women such as differentiated retirement and maternity allowance. |
| **4- Law 8,408 of February 13th, 1992** | Gives new wording to the provisions of Law nº 6515 of 26 December 1977. | Defines the deadline for judicial separation and determines that, upon separating, the woman should go back to using her maiden name, unless such change results in serious damages. |
| **5- Law 8560 of December 29th, 1992** | Regulates paternity suits involving children born out of wedlock, among other things. | Regulates the acknowledgment of children born out of wedlock; the birth registration of children by the mother alone; and the filing of paternity suits in such cases. |
| **6- Law 8,629 of February 25th, 1993** | Provides for the regulation of constitutional provisions related to the Agrarian Reform under Chapter III, Title VII of the Federal Constitution. | Art. 19 guarantees that the title-deed and concession of use shall be granted to the man or the woman, or to both, irrespective of their marital status, preferably to the heads of large households. |

[33] The National Congress also passed Bill 3,692/93, by Deputy Socorro Gomes, which provides for the obligation, on the part of the Public Health Network, to perform DNA tests. The Bill was vetoed by the President of the Republic (MSC 239/95). The National Congress sustained the presidential veto on 16 August 1995. Congress passed Bill 2802/92, submitted by the Parliamentary Inquiry Committee that investigated the extermination of minors. The Bill was vetoed in full by the President of the Republic on 30 December 1997. Congress passed Complementary Bill 26/96, by Deputy Maria Laura, which provides for indemnity to either spouse in case of labor or transportation accident leading to the death of the Social Security beneficiary. The Bill was vetoed in full on 6 July 1999. Congress passed Complementary Bill 50/95, by Deputy Jackson Pereira, which amends Law no. 7,998 of 11 January 1990, which creates unemployment, with the aim of extending the benefit to domestic servants, among other things. This Bill was also vetoed in full. Congress passed Bill 3189/97 (originally Supplementary Bill 135/96), which amends to Penal Code by providing for conclusive presumption of violence if the victim is under 14 years of age, insane, or mentally retarded, and the agent was aware of such condition; and relative presumption of violence if the victim is unable of off ring resistance. This bill was vetoed in full.

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| **7- Legislative Decree n° 26 of June 23rd, 1994** | Determines the withdrawing of reservations presented by the Brazilian Government regarding the signing of the *Convention for the Elimination of All Forms of Discrimination Against Women.* | |
| **8- Law n° 8861 of March 25th, 1994** | Gives new wording to arts. 387 and 392 of the Labor Code and amends arts. 12 and 25 of Law n° 8212 of 24 July 1991, and arts. 39, 71, 73, and 106 of Law n° 8213 of 24 July 1991, all of which refer to the right to maternity-leave. | Guarantees the right to maternity-leave to all female urban and rural workers, as well as to female domestic servants, and the right to maternity allowance to small rural female producers and female free-lancers. The law was approved as a result of a broad class mobilization. Art. 1, which amended the Labor Code, was vetoed by the President. The regulation of maternity allowance was restricted to Social Security. |
| **9- Law 8,921 of July 25th, 1994** | Gives new wording to item II of art. 131 of the Labor Code. | The term "non-criminal abortion" was replaced by the term "abortion", as one of the reasons that are not to be considered absenteeism. |
| **10- Law 8,930 of September 6th, 1994** | Gives new wording to art. 1 of Law n° 8072 of 25 July 1990, which provides for hideous crimes under art. 5, item XLIII of the Federal Constitution, among other things. | Includes rape in the group of non-bailable hideous crimes under art. 5, item XLIII of the Federal Constitution. |
| **11- Law 8,952 of December 13th, 1994** | Amends the Code of Civil Procedure regarding the discovery process and preventive injunction. | Regulates the participation of spouses in the filing of real state suits involving *rights in rem* – the need or not to participate. |
| **12- Law 8,971 December 29th, 1994** | Regulates the right of men and women living as husband and wife to alimony and inheritance. | Regulates the right of men and women living as husband and wife to alimony and inheritance, provided that they have lived together for more than 5 years or have had any children. |
| **13- Legislative Decree n° 63 of April 19th, 1995** | Approves the text of the Convention on International Adoption concluded in The Hague on 29 May 1993. | |
| **14-Legislative Decree n° 107 of September 1st, 1995** | Approves the text of the Inter-American Convention to Prevent, Punish and Eradicate Violence against Women signed in Belém-Pará on 9 June 1994. | |

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| **15- Law 8,974 of January, 5th, 1995** | Regulates items II and V of § 1 of art. 225 of the Federal Constitution and defines rules for the use of genetic engineering techniques, among other things. | Defines the rules of the use of genetic engineering techniques (including *in vitro* fertilization and "surrogate mothers") and release to the environment of genetically modified organisms (GMO), and authorizes the Executive Branch to set up, within the office of the Presidency of the Republic, of a National Technical Commission on Biosafety. |
| **16- Law 8,978 of January 9th, 1995** | Provides for the construction of day-care centers and pre-schools. | Housing complexes financed by the Financial Housing System shall contemplate, as a priority, the construction of day-care centers and pre-schools. |
| **17- Law nº 9029 of April 13th, 1995** | Prohibits the requirement of proof of pregnancy and sterilization and other discriminatory practices for the purpose of admission into work or continuance of the Legal Labor Relationship. | The prohibition includes the requirement of test, examination, investigation, expert report, statement, or any other procedure related to sterilization or pregnancy; inducement or instigation to sterilization, birth control, etc., and defines penalties. |
| **18- Law 9,046 of May 18th, 1995** | Adds new paragraphs to art. 83 of law nº 7210 of 11 July 1984 – the Penal Enforcement Law. | Determines that penal premises for women shall have nurseries where female inmates can nurse their children. |
| **19- Law 9,100 of October 2nd, 1995** | Establishes rules for municipal elections to be held on 3 October 1996, among other things. | § 3 of art. 11 establishes that a minimum quota of 20% of vacancies available in each political party or coalition shall be destined to female candidates. |
| **20- Law 9,263 of January 2nd, 1996** | Regulates § 7º of art. 226 of the Federal Constitution, which provides for family planning and defines penalties, among other things. | Articles 10, 11, sole § of art. 14 and art. 15, which regulated voluntary sterilization were vetoed. The vetoes were overruled on 13 August 1997 and published in the Official Gazette on 20 August 1997. |
| **21- Law 9,278 of May 10th, 1996** | Regulates § 3º of art. 226 of the Federal Constitution. | Regulates § 3 of art 226 of the Federal Constitution, which considered the stable union as a family entity. Articles 3, 4, and 6, which would enable the spouses to register a contract regulating their rights and duties were vetoed. |

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| **22- Law 9,281 of June 5th, 1996** | Revokes the sole paragraphs of arts. 213 and 214 of Executive Law nº 2848 of December 1940 – the Penal Code. | The law revoked the sole paragraphs of arts. 213 and 214 of Executive Law 2848, of 7 December 1940 – the penal Code, which had reduced the penalty for crimes committed against persons 14 years and under. |
| **23- Law 9318 of December 6th, 1996** | Alters subparagraph "h" of item II of article 61 of the Penal Code. | The law includes among the circumstances that aggravate the penalty, crimes committed against pregnant women. |
| **24- Law 9,394 of December 20th, 1996** | Establishes the guidelines and bases for national education. | Provides for Early Childhood Education through day-care centers or equivalent institutions for children up to 3 years of age and pre-school for children 4 to 6 years of age. |
| **25- Law 9,455 of April 7th, 1997** | Defines crimes of torture among other things. | Defines crimes of torture. (Constraint through the use of violence leading to physical or mental pain. Forcing the person to confess or provide information for the purpose of investigation, police or administrative inquest, action at law, or the application of personal punishment, with 2-5 years of imprisonment and fine, (plus 1/3 if the perpetrator is a civil servant or holds public office). |
| **26- Law 9,504 of September 30th, 1997** | Defines election rules. | General Provisions – Registration of Candidates<br><br>Art. 10 - § 3º Number of vacancies resulting from thee rules provided for in this article. Each political party or coalition shall set aside a minimum of 30 percent and a maximum of 70 percent for candidates of each sex.<br><br>Art. 16. Up to 45 days before election day, the Regional Electoral Courts shall send to the Superior Electoral Court, for the purpose of data centralization and dissemination, the list of candidates running in the majority and proportional elections, which shall compulsorily include reference to the gender and office to which they are running. |

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| | | Transitory Provisions:<br><br>Art. 80. In the elections to be held in 1988, each political party or coalition shall set aside, for candidates of each sex, a minimum of 25 percent and a maximum of 75 percent of the candidacies it is capable of registering. |
| **27- Law 9,520 of November 27th, 1997** | Revokes provisions of Executive Law nº 3689 of 3 October 1941 – the Code of Penal Procedure, regarding the woman's right to file complaints or claims. | Provides for the woman's right to file complaints or claims. |
| **28- Law 9,601 of January 21st, 1998** | Provides for labor contracts for an indefinite period. | Provides for the temporary contract for a minimum three-month period, which may be renewed for a two-year period.[34] |
| **29- Law 9,713 of November 1998** | Alters provision of Law nº 6450 of 14 October 1997, among other things. | Provides for the Basic Organization of the Military Police of the Federal District (aimed at unifying the male and female staffs of police officers). |
| **30- Constitutional Amendment nº. 20, of December 1998** | Establishes the General Social Security System. | Provides for the General Social Security System by altering, among other things, the right of women to retirement.[35] |
| **31- Law 9,797 of May 6th, 1999** | Provides for the obligation on the part of hospitals belonging to the Single Health System (SUS) to perform breast-repair cosmetic surgery in case of mutilation resulting from cancer treatment. | Women who suffer total or partial breast mutilation resulting from the use of cancer treatment techniques are entitled to reconstructive cosmetic surgery. |
| **32- Law 9,799 of 26 May 1999** | Includes in the Labor Code rules regarding access of women to the labor market, among other things. | The Labor Code, which was approved by Executive Law nº 5452 of 1st May 1943 entered into force with the following changes: Duration, Labor Conditions, and Discrimination against Women. Partially vetoed.[36] |

[34] The women's movement criticized the labor contract for a fixed period, in the sense that the establishment of a minimum period and the existence of a base of contractual working-hours many times jeopardizes two of the "guarantees" provided for in this same instrument: the right to maternity-leave and the provisional stability of pregnant women.

[35] In the assessment of the women's movement, the amendment weakens the concept of social security that pervades the social security system and reinforces its contribution-oriented character.

[36] Arts. 390A, 390D, 401A, and 401B have been vetoed.

Art. 390A establishes that: "A worker's dismissal shall be annulled whenever it results from the filing of a suit grounded on the violation of the principles of professional equality and of opportunity between men and women". The veto was based on the following reasons:

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| **33- Law 9,876 of November 26th, 1999** | Provides for social security dues by the individual taxpayer and for the calculation of the benefit and amends provisions of laws nº 8212 and 8213, both of 24 July 1991, among other things. | |
| **34- Law nº. 9,975 of June 23rd, 2000** | Adds an article to law nº 8069 of 13 July 1990, which provides for the Statute of the Child and the Adolescent. | |
| **35- Constitutional Amendment nº. 29 of September 2000** | Amends arts. 34, 35, 156, 160, 167, and 168 of the Federal Constitution and adds an article to the act of the Transitory Provisions, so as to ensure the funds needed to finance public health actions and services. | |

"The clause, by providing for the nullity of the dismissal of a worker who files an action grounded on discrimination has created employment stability, thereby contradicting art. 7, I of the Federal Constitution, which does not grant permanent stability as a general rule. Furthermore, as provided for, the command would encourage the filing of such actions as a preventive form to achieve employment stability, and would ultimately produce a reverse effect by further restricting employment opportunities for women, rather than protecting them. As the provision in question does not define the final term of stability and is of a generic nature, it lacks constitutionality and should therefore be vetoed".

Art. 390D established that: "Art. 390D. The breach in employment relationship due to discriminatory act authorizes the employee to choose between: I – being readmitted with full indemnification corresponding to the period during which he/she was kept away, through payment of all due remunerations, which shall be adjusted for currency devaluation, plus legal interests; or II – receiving double the remuneration corresponding to the period during which he/she was kept away, which shall be adjusted for currency devaluation, plus legal interests". The reasons for the veto were the following: "The matter has already been regulated by law. The provision is merely a transcription of art. 4 of law 9,029/95, which is currently in force, and therefore contradicts the provision of art. 7, IV of Complementary Law no. 95/98, which prohibits the regulation of the same subject by more than one law. Since the Bill does not intend to replace Law no. 9,029/95 and does not explicitly revoke it, the provision should be vetoed, since it is contrary to the public interest by promoting the multiplication of legal commands of identical content".

Art. 401 A established that: "Art. 401A. The following discriminatory practices shall be considered crimes: I - the requirement of test, examination, investigation, expert report, statement, or any other procedure related to sterilization or pregnancy; II – the adoption, by the employer, of any measures that might indicate: a) the inducement or instigation to genetic sterilization; b) the promotion of birth control, except for the offer of advisory or family planning services provided by public or private institutions operating in compliance with the rules of the Single Health System (SUS). Penalty – 1-2 years of imprisonment plus fine; Sole paragraph. The following are considered criminals under this article: I – the individual who employs; II – the legal representative of the employer, as defined in the labor law; III – the director, either directly or by delegation of powers, of public agencies and institutions of the direct or indirect public administration, as well as foundations of any of the three Government Powers, the States, the Federal District, and Municipalities". The reasons for the veto were the following: "In addition to the fact that the matter has been regulated in art. 2 of Law 9,029/95, it promotes the undesirable inclusion of a penal provision in the Labor Code, thereby contradicting the provisions of items II and IV of art. 7 of Complementary Law no. 95/98, which prohibits different matters from being dealt with in the same law, such as would happen if penal matters were to be included into a labor statute. Notice that the crimes against labor organization, which is a labor-related subject, are mentioned in the Penal Code and not in the labor Code. The provision should therefore be vetoed, since it is contrary to the public interest".

Finally, art. 401B established that: "Art. 401B. Without prejudice to the provisions of the previous article, those who infringe arts. 373A, 390A, 390B, 390C, 390D, 392, § 4º, of this Labor Code, shall be subject to the following punitive acts: I – an administrative fine corresponding to tem time the amount of the highest salary paid by the employer, plus fifty percent in case of relapse; II – prohibition from obtaining loan or financing from official financial institutions". The reasons for the veto were the following: "The matter has already been regulated in art. 3 of Law 9,029/95 and, based on the interpretation of the aforementioned provisions, should be vetoed since it is contrary to the public interest".

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| **36- Law 10,048 of November 8th, 2000** | Prioritizes assistance to a specific public, among other things (by regulating articles 227 and 230 of the new Federal Constitution). | The Project, which is based on the Federal Constitution, aims at ensuring special treatment to the physically disabled, elderly, pregnant and nursing women, and people carrying infants, in government offices and concessionaires of public services, public areas, rest rooms, and transportation, by defining penalties to perpetrators. Partially vetoed. |
| **37- Law 10,208 of March 23th, 2001** | Adds provisions to Law nº5859 of 11 December 1972, which provides for the profession of domestic servant, so as to enable access to the Employee's Dismissal Fund (FGTS) and to unemployment pay. | |
| **38- Law 10,223 of May 15th, 2001** | Amends Law nº 9656 of 3 June 1998, so as to provide for the obligation on the part of private health insurance to cover breast-repair cosmetic surgery in case of mutilation resulting from cancer treatment. | |
| **39- Law 10,224 of May 15th, 2001** | Provides for the crime of sexual harassment, among other things. | Both sole paragraphs of items I and II were partially vetoed.[37] |
| **40– Law 10,244 of June 28th, 2001** | Revokes art. 376 of the labor Code (CLT) so as to allow women to work overtime. | |
| **41- Law 10,421 of April 15th, 2002** | Extends to adoptive mothers the right to maternity-leave and maternity allowance. | |

[37] Also vetoed were items I and II of art. 216-A, which established that: "Art. 216-A - Sole paragraph. Subject to the same punishment shall be those who commit the crime by: I – availing themselves of domestic, cohabitation, or hospitality relations; II – abusing or violating duties that are inherent to their office or position. The reasons for the veto were the following: "With regard to he sole paragraph of art. 216-A, it is worth mentioning that the rule contained in it, by sanctioning with the same punishment provided for in the caption the crime of sexual harassment committed in the circumstances it describes, implies undeniable breach of the punitive system adopted by the Penal Code and creates undue benefit in favor of the criminal. Art 226 of the Penal Code explicitly defines the special reasons for increasing punishment, which generically apply to all crimes against customs, among which are the situations described in the sole paragraph of art. 216-A. Thus, should the sole paragraph become part of the legal system, the sexual harassment performed in the situations described in said paragraph could not be subject to the punishment increase provided for in art. 216-A, an assumption which would obviously contradict the public interest, in view of the higher gravity of such crime when committed by agents who avail themselves of domestic, cohabitation or hospitality relations".

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| **41– Law 10,445 of May 13th, 2002** | Amends the sole paragraph of art. 69 of Law nº 9099/95, so as to ensure, in case of domestic violence, a restraining order to keep the aggressor away from home as a precautionary measure. | |

In view of their relevance, these laws will be the object of detailed analysis throughout this report.

**State Constitutions**

Brazil adopted the federative form of Government in 1889, when the Republic was proclaimed. The Federal Constitution of 1988 reestablished the federative pact by stating, in its article 1, that the Federative Republic of Brazil is formed by the indissoluble union of States, Municipalities, and the Federal District. Article 18 of the Charter establishes that the political-administrative of the Federative Republic of Brazil comprises the Union, the States, the Federal District, and the Municipalities, all of which are autonomous under the terms of the Constitution. Article 60, paragraph 4, in turn, includes among the inviolable clauses the Federative Form of State, and prohibits the possibility of any amendments to the Constitution aimed at canceling such clause.

In the light of the Brazilian Federation, the states are granted autonomy as well as the ability to organize themselves, and are therefore authorized to develop their own State Constitutions, provided that they comply with the principles of the Federal Constitution.

The twenty-six member states of the Federation and the Federal District have played an important role in combating discrimination against women, some times by reinforcing the principles of the Federal Constitution and others by expanding the scope of the constitutional provisions within the sphere of the respective state. By improving the legal system of combat against discrimination, State Constitutions become an additional instrument for the protection of the right to equality and for combating discrimination against women.

The assessment and examination of State Constitutions evinces the sensitivity of the members of the Constitutional Assemblies in several states, which undeniably results from the effective efforts of the Women's Movement to Combat Discrimination Against Women. Many times those texts merely reinforce the text of our Federal Constitution, although they are rich in several innovative approaches, such as:

a) The Constitution of the state of Pará establishes legal guidance to issues affecting especially women;

b) The Constitution of the state of Ceará provides for the promotion of measures aimed at reducing school-dropout rates and eliminating the knowledge gap between men and women;

c) The Constitutions of the states of Minas Gerais and Paraíba provide for maternity care as a priority objective; and the Constitutions of the states of Ceará, Ro Grande do Norte, and Roraima, along the same line, raise maternity protection to the status of social right;

d) The Constitutions of the states of Amapá, Espírito Santo, Maranhão, Rio Grande do Norte, Rio Grande do Sul, Rondônia, Sergipe, and Tocantins specifically establish that funds be earmarked for maternity care;

e) The Constitution of the state of Goiás, with regard to nursing mothers, establishes a 30-minute interval at every three hours of uninterrupted work; and the Constitution of the State of Paraíba provides for the possibility to reduce daily working hours by one-fourth;

f) The Constitutions of the states of Bahia, Pará, Pernambuco, Piauí, Rio de Janeiro, Sergipe, and Tocantins guarantee adoptive mothers rights similar to those enjoyed by biological mothers;

g) The Constitutions of the states of Bahia, Amapá, São Paulo, and the Organic Law of the Federal District guarantee pregnant civil servants the right to be transferred to a different position by medical recommendation, without damage to their salary and other benefits;

h) The Constitutions of the states of Amapá, Bahia, the Federal District, Goiás, and Rio de Janeiro provide for the elimination of the stereotyped portraying of women in school textbooks and materials. Some of these Constitutions even mention changes in curricula and the training of teachers, with a view to gender equality. It is worth mentioning that the Organic Law of the Federal District establishes that university education should include in the curriculum the study of women's historical achievements;

i) The Constitutions of the states of Minas Gerais, Mato Grosso do Sul, Paraíba, Paraná, Tocantins, Amapá, Bahia, Espírito Santo, Goiás, Rio Grande do Sul, and the Organic Law of the Federal District provide for the prevention and treatment of domestic violence against women. Some Constitutions provide for the establishment of police departments specialized in providing assistance to women (Amapá, Bahia, Ceará, the Federal District, Mato Grosso do Sul, Paraná, Rio de Janeiro, Rio Grande do Sul, and Sergipe); others establish the development of programs aimed at providing multidisciplinary assistance to women; there are also some which determine the establishment of shelters to women at risk (Bahia, Ceará, the Federal District, Mato Grosso, Paraná, Piauí, Rio de Janeiro, and Tocantins); and, finally, the Constitution of the State of Tocantins provides for specialized medical and psychological care to women who have been victimized by rape;

j) The Constitutions of the states of Ceará, Maranhão, Pará, Paraná, Bahia, Rio de Janeiro, Tocantins, and the Organic Law of the Federal District provide for the participation of women in the development of governmental policies and their implementation, of which the Constitution of the state of Tocantins is an example by establishing the participation of women's representative entities in the development, control, and implementation of government programs of full assistance to women's health.

Now that the important contributions of State Constitutions to fight discrimination against women have been emphasized, we shall move on the specific section of the report, which contains the legislative, judicial, and administrative measures adopted by Brazil for the purpose of implementing the *Convention*, as well as the factors and difficulties the country has dealt with, in accordance with article 18 of the *Convention on the Elimination of All Forms of Discrimination Against Women*.

## 2. Specific Section – Articles of the Convention

***Article 1.***

***For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.***

***Article 2.***

***States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:***

***(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;***

***(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;***

***(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;***

***(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;***

***(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;***

***(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;***

***(g) To repeal all national penal provisions which constitute discrimination against women.***

### Legislative Measures

Having ratified the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW), the Brazilian State has incorporated into its judiciary system the legal definition of "*discrimination against women*" as contained in art. 1 of the *Convention*, and has undertaken to pursue the necessary measures, including of a *legislative nature*, to eliminate it as provided for in art. 2 of said *Convention*.

In 1989, through *General Recommendation no. 12* approved in its 8th period of sessions, the Committee responsible for *Convention* monitoring recommended that the State Parties included in their reports information on violence against women, as well as on the measures adopted to combat it, *based on its understanding that violence against women is a form of discrimination* that seriously impairs the enjoyment of rights and freedoms by women on an equal basis with men.

The Committee concluded that the reports submitted by the States Parties sometimes failed to reflect adequately the *close relation between discrimination and violence against women, as well as the violation of human rights and fundamental freedoms*. The Committee understands that the accurate enforcement of the Convention requires that Member States adopt positive measures to eliminate all forms of violence against women.

In this regard, ***General Recommendation nº 19 - "Violence against Women"***, which was approved by the Committee in 1992 in its 11th period of sessions, expressly states that *the definition of discrimination against women* as provided for in art. 1 of the *Convention includes violence on the basis of sex, i.e., violence committed against women because they are women, or that disproportionately affects women.* It also states that the *Convention* shall apply to violence perpetrated against women by public authorities as well as by any person, organization or corporation, *and that States may also be held responsible for private acts*, should they fail to diligently pursue measures aimed at preventing the violation of rights or at investigating as well as punishing acts of violence and providing compensation to the victims.

In 1994 the Organization of American States (OAS) approved, within the scope of the Human Rights Inter-American Regional System, the Inter-American Convention to Prevent, Punish and Eradicate Violence against Women – known as the "*Belém do Pará Convention*".

By adopting the definition of violence against women provided for in the Declaration of the Elimination of Violence Against Women of the United Nations (UN 1993), the Belém do Pará Convention: a) reiterates that physical, sexual and/or psychological violence against women is a violation of human rights; b) includes the *gender* category as one of the basis of violence against women; c) creates a list of rights, so that women may be ensured the right to a violence-free life both on public and private level; d) adopts a broad concept of domestic and intra-family violence; and e) defines the duties to be fulfilled by the State parties.

Brazil ratified the Belém do Pará Convention on 27 November 1995 (Legislative Decree nº 107/95) and undertook to fulfill the legal duties arising from it.

Under Brazilian law, the human rights of women shall therefore be regarded from the perspective of *discrimination* and *violence*. Discrimination and violence are parts of the same binomial, like the two sides of a coin. Discrimination and violence feed one another, to the extent that discrimination against women (the practice of exclusion) justifies aggressions (the practice of violence) and vice-versa. These two practices are rooted on the negative prejudice against and on the devaluing of women.

As for the combat of violence against women, whereas in the Inter-American System the *Belém do Pará Convention* assures Brazilian women of a mechanism to report violations of human rights, within the global system – as regards the rights provided for in CEDAW – this mechanism will only be available to Brazilian women after the Optional Protocol to the CEDAW is enforced in the country, and upon ratification thereof by the Brazilian State.

The Optional Protocol to the CEDAW guarantees women access to the international legal system – in the most direct and efficient way – wherever the national system fails to or neglects to protect their human rights. On 13 March 2001 Brazil signed the Optional Protocol, which was approved by the National Congress on 6 June 2002. The instrument of ratification was deposited with the Secretary General of the United Nations on 28 June of the same year.

**Federal Laws**

*The Federal Constitution*

One of the objectives of the Federative Republic of Brazil is *"to promote the well-being of all, without prejudice as to origin, race, sex, color, age and other forms of discrimination"* (Art. 3, item IV). In article 5, items I and XLI, the Constitution establishes, respectively, that **"men and women have equal rights and duties under the terms of this Constitution"** and that **"the law shall punish any discrimination which may go against fundamental rights and liberties"**. Item L of article 5 also establishes that *"female prisoners shall be ensured of adequate conditions to stay with their children during the nursing period"*.

Equity between men and women brings about consequences at constitutional law level, such as equal access to public services, to urban and rural land, as well as to labor and education. As for maternity protection, in its article 7,

item XVII, the Federal Constitution provides for the right to maternity-leave without loss of job and salary, for a period of 120 days. Article 39, § 3°, of the Constitution extends this right to female government workers. Article 7, item XXV, ensures urban and rural female workers the right to free assistance for their children and dependants from birth to six years of age, in day care centers and pre-school facilities. As for special temporary measures aimed at women, item XX of article 7 of the Constitution provides for the protection of the labor market for women through specific incentives, as provided by law.

The constitutional principle of equality between men and women is contemplated within the scope of domestic and intra-family relations as well, with consequences at infra-constitutional legislation level, particularly in the field of family and criminal law. Art. 226, § 5, of the Constitution states that ***"the rights and duties of marital society shall be exercised equally by the man and the woman"***. As regards violence, the major legal achievement of women in Brazil is contained in article 226, § 8 of the Constitutions, which determines that: ***"The State shall ensure assistance to the family in the person of each of its members, creating mechanisms to suppress violence within the family".***

Therefore, it is easy to see that the 1988 Charter is perfectly in tune with international regulation on the subject. Nonetheless, despite the provisions of international conventions on the protection of the human rights of women and on the constitutional text, ***the country still lacks specific legislation on gender violence, especially domestic violence,*** which affects mainly women and girls. During the past three legislative periods, Congresswomen developed bills based on the contribution of legal experts for the women's movement, as well as on specific rules about the theme that have already been adopted by several countries, including in Latin America and the Caribbean. These bills, which conformed to the guidance of the special UN rapporteur on violence issues, were rejected by the special committees at the Chamber of Deputies, on the grounds that they encompassed several legal areas, and not just Criminal Law.

Therefore, the principles of equality and non-discrimination provided for in the Constitution require that every statutory, civil, criminal and labor law, among others, change their precepts. Infra-constitutional laws, however, still contain discriminatory directives in relation to women, since they were developed, in their majority, early in the past century and are still in force. Notwithstanding recent amendments, the Civil Code in force, for example, dates back to 1916, the Penal Code to 1940, and the Labor Code (CLT) to 1943. It is important to emphasize that the new Civil Code was approved in 2001, but will only come into force on 11 January 2003.

In the opinion of many Brazilian specialists on matters of law, the provisions of the aforementioned Codes containing discrimination against women should have already been revoked by force of the constitutional text. But this view is not a consensus. Civil and Penal Codes commented by several nationally recognized specialists do not refer to the Constitution with regard to articles that treat men and women unequally. Unconstitutional precepts are sometimes applied by national courts. Even if articles of the Civil and Penal Code that are contrary to the object and purpose of the Constitution are considered as having been revoked, this revoking is implied, rather than explicit. Decision regarding the applicability of such acts is therefore left to the discretion of each judge.

Considering that the Federal Constitution in force dates from 1988, and that it consolidates the precept of non-discrimination, solidarity and equality, there is a temporal and ideological debit among the legal model, the social changes in the 20th century, and the innovations in the new paradigm of justice in the international law on human rights, which have been incorporated into Brazilian constitutional law. The Brazilian government is endeavoring to reorder the national legal system thoroughly, in the light of the constitutional text and of treaties on human rights.

*The Civil Code:*

The provisions of the Civil Code will be specifically dealt with in the comments on articles 15 and 16 of the *Convention*. Nonetheless, it is important to inform that after 26 years of discussions, the National Congress finally passed the ***New Civil Code*** in August 2001. This Code, which has already been sanctioned, represents an undeniable advance towards the adjustment of Civil Law to the Constitution, especially with regard to the principle of equity between men and women. It will only come into force on 11 January 2003, upon expiration of the *vacatio legis* period.

*The Penal Code*

The Brazilian Penal Code, created by Executive Law 2,848, has been in force since 1940, with amendments introduced in 1984 by Law 7,209, as a Revision of its General Section.

The Federal Government, through the Justice Ministry, has set up successive Committees charged with revising the Special Section of the 1940 Penal Code, and has endeavored to amend this Section, in which crimes are typified. Special mention should be made to the fact that the Penal Code Bill introduces positive advances in matters related to the respect for women's dignity, by proposing that crimes such as rape and violent indecent assault, among others, should no longer be considered as crimes against customs but rather as crimes against sexual liberty, as provided for under title "Crimes Against Sexual Dignity". Another positive aspect of the Bill is its compliance with Recommendations of the Cairo and Beijing Conferences with regard to abortion, for it puts forward that the legal provisions of article 128 of the Penal Code be expanded.

Nonetheless, the Bill is still in the Ministry of Justice and is yet to be submitted to the National Congress for approval. As a result, the Brazilian Penal Code still contains provisions that reproduce discriminatory and disrespectful references to women's dignity, and which are contrary to the constitutional text and to treaties on human rights to which Brazil is a party.

In the Penal Code, General Section, items VII and VIII of article 107 establish that, with regard to crimes against custom (*sexual offences*), *punishment shall expire* by the agent's marriage to the victim, or by the victim's marriage to a third party, whenever the crimes have been committed without actual violence or serious threat, and provided that the offended party does not request continuance of the police inquiry or of the criminal proceedings within sixty (60) days of the marriage celebration. These items are not based on the principle of equity and respect to the dignity of women as persons, but rather on the honor of the patriarchal family. Sexual crimes affect the victim's physical, psychological and moral integrity, and her marriage to a third party or to the attacker does not repair the damage inflicted upon her. Despite Revision of the General Section of the 1984 Penal Code, such causes that leave sexual crimes unpunished remain in force. The notion behind this benefit consists in having the "victim's honor preserved/repaired" through marriage, whether to the defendant or to a third party in certain cases.

In the Special Section of the Penal Code, article 134 establishes that it is a crime *"to expose or abandon a newborn child for the purpose of concealing personal dishonor"*. The punishment for such crime varies from six months to two years of imprisonment. In the case of aggravated battery, the punishment increases to 1-3 years of imprisonment, and to 2-6 years of imprisonment in case of death. The motivation for commitment of this crime – concealing personal dishonor – is based on discriminatory social precepts representing control over women's sexuality and reproduction. The subjective criterion involved affects women alone, who are the only ones subjected to dishonor resulting from their sexual behavior. This provision no longer makes sense, as it reinforces the idea that a woman's honor is associated with her sexual behavior and reproduction.

The articles grouped under the title *Crimes Against Custom* in the Penal Code, Special Section, deal ultimately with the sexual freedom of women. Each one of those articles, which are detailed below, contains provisions that include discrimination against women, who are regarded as vulnerable, fragile and innocent beings. These discriminatory provisions attempt against women's right to equity in relation to men, besides denying them the ability to discern regarding the exercise of their sexuality and have control over their own body.[38]

[38] This also ultimately affects international instruments produced in the UN Cairo Conferences on Population and Development (1994) and in the Beijing World Conference on Women (1990) by acknowledging the existence of sexual and reproduction rights that ensure women full freedom of choice, and autonomy in the exercise of their sexuality and reproduction rights.

*Art. 215. Having carnal knowledge with an honest woman through deceit:*
*Punishment – 1- 3 years of imprisonment*
*Sole paragraph. If the crime is committed against a virgin woman under 18 years of age and over 14 years of age:*
*Punishment – 2-6 years of imprisonment.*

*Art. 216. Inducing an honest woman, through deceit, to engage in or consent to libidinous act other than carnal knowledge:*
*Punishment – 1- 2 years of imprisonment*
*Sole paragraph. If the victim is under 18 years of age and over 14 years of age:*
*Punishment - 2- 4 years of imprisonment*

*Art. 219. Abducting an honest woman through violence, serious threat or deceit for libidinous purposes:*
*Punishment - 2 – 4 years of imprisonment.*

The discrimination in the above mentioned articles is carcterized by the reference to the fact that the victim must be "an honest woman". The concept of 'honest woman' as formerly used in our society no longer makes sense. As it also no longer makes sense, subjugating a woman's judgment in relation to sexual conduct by considering her capable of being deceived or induced to engage in such conduct. These provisions are no longer in tune with existing social values. They also violate the principle of equity, damage the autonomy and liberty of women in relation to their sexual life, and pave the way for injustices to be committed against the "potential defendants". It is worth saying that this concept is not applicable by law to cases in which men and boys are the victims.

Still under the title *Crimes Against Custom*, article 217 of the Code, on *Seduction*, considers as a crime – punishable by 2-4 years of imprisonment: seducing a virgin woman under 18 years of age and over 14 years of age and having carnal knowledge with her, by taking advantage or her inexperience or justifiable confidence. In order to be established as such, the crime of seduction requires that the victim be a virgin. As in the case of the other articles, this provision is based on prejudices and stereotypes, and relegates women to the condition of a being in need of guardianship by considering her capable of being deceived as a result of her "inexperience or justifiable confidence". Not to mention the requirement that the victim be a virgin. This provision evidences the curtailment of women's sexual freedom. The conduct typified in this section was justifiable in the past, when the aggressor would often promise to marry the victim.

Still under the title *Crimes Against Custom*, articles 220, 221 and 222 of the Chapter on *Abduction* state:

*Art. 220. If the victim of abduction is over 14 years old and under 21 years old and consents to the abduction:*
*Punishment – 1–3 years of imprisonment.*

*Art. 221. The punishment will be reduced by one-third if the abduction is committed for the purpose of marriage, and by half if the agent, not having engaged in any libidinous act with the victim, sets her free or leaves her in a safe place at her family's disposal.*

*Art. 222. If upon abduction or right after it the agent commits another crime against the victim, the agent shall be subjected to the punishment applicable to both abduction and to the other crime.*

A crime of consensual abduction makes no sense. If it is consensual, then it is not to be considered abduction, for the act depended on the will and consent of both parties. By considering Consensual Abduction as a crime, the Code presupposes that women hold an inferior position in society, in addition to disregarding their autonomy and the validity of their consent and will. It goes against the liberty and autonomy of women by relegating them to the condition of protected persons, ignoring their resolve and not taking into account the equity in relations between men and women.

In the Special Section of the Code, under the title *Crimes Against the Family*, article nº 240 of the Chapter *Crimes Against Marriage*, provides for the crime of *adultery*, which punishes both the defendant and the co-defendant with 15 days to six months of imprisonment. Under the Brazilian law now in force, in formal terms adultery affects men and women alike. Nevertheless, this is not what occurs in practice. By claiming that women have committed adultery, many men have been – and some still are – acquitted by juries and courts, of assault on and murder of their wives (and also live-in girlfriends, ex-live-in girlfriends, lovers, ex-lovers, etc.), on the polemical and outrageous grounds of *self-defense of the honor*, which was construed by experts in law, and sometimes still is supported and sustained in our courts. Self-defense, which under article 23 of the Code is one of the legal exclusions for the illegality of an act, protects each and every legal asset, including the honor. Nevertheless, marital honor as claimed in this thesis does not make sense, both because it discriminates against and controls women's sexuality, and because there is no marital honor to be protected, to the extent that honor is a personal and private attribute.

It is worth emphasizing, however, that nearly all of the aforementioned provisions have been eliminated in the Bill to Revise the Special Section of the Penal Code put forth by the Executive Branch.

Under Law 10,224, which was published on 16 May 2001, sexual harassment became a crime included in the Penal Code. As sexual harassment was not explicitly provided for in the Code, reports that someone (generally women) had been constrained to have sexual intercourse in order to hold a job or obtain a promotion, or was being threatened for not agreeing to the blackmail, were not always adequately dealt with by police stations. Police departments sometimes endeavored to fit such conduct into other crimes such as illegal constraint, threat, disturbance of peace, and at other times, tried to discourage the plaintiff from seeking any redress from the Public Powers-that-be.

The new Law adds to the Penal Code a new article on sexual harassment, which is therein defined as: "Constraining someone for the purpose of obtaining sexual favors or facilitation, where the agent takes advantage of his/her higher-ranking status inherent to the exercise of office, position or function". The crime is punishable by 1-2 years of imprisonment.

Once the law is passed, it is expected that companies that once were negligent or even tolerant of harassment in the workplace will take the issue seriously, and regard it as one of their duties to preserve a pleasant working environment by adopting preventive actions and discussing codes of conduct and other strategies with their employees, so that the workplace can become more equitable and peaceful.

A recent study indicates that compensation (indemnity and reparation) is a path still to be explored in Brazil by women who have been subjected to sexual harassment in their workplace.[39]

*The Labor Code*

Article 373-A, sole paragraph, of the Labor Code, as complemented by Law 9,799/99, provides for the adoption of temporary measures to define policies of equity between men and women, particularly those aimed at correcting distortions that affect professional development, access to employment, and the general working conditions of women.

Articles 391 to 400 of the Labor Code deal with the protection of motherhood and, consequently, with the actual consolidation of equity between men and women. Under the first of those articles, marriage and pregnancy shall

[39] Mônica de Melo. *"Assédio sexual: um caso de inconstitucionalidade por omissão". ("Sexual harassment: a case of unconstitutionality by omission").* In Journal of Legislative Information, Brasilia: Federal Senate, Under-secretariat for Technical Issues, year 36, no. 143, July/September 1999. According to the author, in the U.S. the Ford Motor Co. has agreed to pay US$ 7.75 million to some 900 women as a result of complains about harassment, sexual discrimination, abuse, and verbal insults with sexual connotation reported in two of the company's factories, in Chicago. In addition, the company has undertaken, before the U.S. Equal Employment Opportunity Commission to spend over US$ 10 million in educational policies, training and clarifications aimed at preventing future cases. In 1998 the Mitsubishi Company agreed to pay US$ 34 million to suspend sexual harassment law suits started by 300 women employees of the company.

not constitute just cause for rescinding a woman's work contract. The sole paragraph of this provision also establishes that restricting a woman's right to her job by virtue of marriage or pregnancy shall not be allowed in regulations of any nature, whether collective or individual labor agreements. In this regard, Law 9,029/95 prohibits employers from requesting pregnancy tests or proof of sterilization for the purpose of admission or maintenance of the legal work relationship.

Article 392, paragraph 4, of the Labor Code, as complemented by Law 9,799/99, guarantees female employees, during pregnancy: the right to be transferred to another position whenever their health conditions so require; the right to resume their previous position; and the right to be released from their duties during working hours for the time needed for at least six medical appointments and complementary laboratory tests.

Article 393 of the Labor Code establishes that, during maternity-leave, women shall be entitled to their full salary and, in case such salary varies, it is to be calculated on the basis of the average of the last six months at work.

Article 395 of the same legal instrument establishes that even in case of non-criminal abortion women shall be entitled to a two-week rest period without loss of salary, and to be ensured the right to resume the position they held before the leave of absence. Law 8,921 of 15 July 1994 removed the term "non-criminal" from article 131 of the Labor Code, so as to prevent any absence from work due to abortion from being considered as absenteeism. Nevertheless, the law does not provide for such leave of absence in case of illegal abortion. Upon their return to work, female workers shall be ensured two special rest periods to nurse their children, according to article 396 of the Labor Code.

The system of payments to maternity-leave beneficiaries has been the object of recent changes. If under the previous system the employer was responsible for paying the benefit and was subsequently reimbursed by the National Social Security Institute (INSS), now the employee herself needs to register in order to receive the benefit personally. According to some people, this system will have to be reviewed, since it is not always making women's lives any easier.

On the other hand, Law 8,861 of 25 March 1994 increased the number of maternity-leave beneficiaries by extending the right to domestic servants, small rural workers, freelancers, and autonomous workers.

Still with regard to maternity-leave, Constitutional Amendment nº 20 of 15 December 1998, which changed the Social Security System, establishes in its article 14 that, under the System, the ceiling for the payment of benefits is of R$ 1,200.00. Upon examining the Direct Action for Unconstitutionality on the matter, the Supreme Court granted the restraining order request, by recognizing that the ceiling established in article 14 of Constitutional Amendment nº 20/98 does not apply to the maternity-leave provided for in article 7, item XVIII of the Federal Constitution, and that the full payment of said maternity-leave should befall the Social Security Institute, considering that the amendment proposal that tends to abolish individual rights and guarantees will not be the object of deliberation (art. 60, § 4, item IV of the Federal Constitution). This was just the judgment of the restraining order, which is therefore provisional. The court has yet to pass judgment on merits.

Finally, under article 399 of the Labor Code, the Labor Ministry will award a certificate of merit to those employers who set up and maintain day-care centers and institutions to protect pre-school age children.

*Other laws and compilations*

The dissemination of discriminatory ideas is prohibited by the Brazilian legal system in several specific laws, such as those that regulate the press, communications, and the defense of consumers against deceitful advertising. Law 4,117/62, which established the Brazilian Telecommunications Code, punishes the use of means of communication for the purpose of discriminatory practices. The Press Law (Law 5,250/65), in its article 14, also prohibits advertisement of prejudice of any type, which is punishable with 1 to 4 years of imprisonment. The Consumer Defense Code, which was established by Law 8,078/90 and provides for the protection of consumers, prohibits all sorts of deceitful,

discriminatory, or violence-enticing advertising, which are punishable with three months to two years of imprisonment plus fine.

The Statute of the Child and the Adolescent, which was established by Law 8,069/90, determines, in article 5, that *"no child or adolescent will be subjected to any form of negligence, discrimination, exploitation, violence, cruelty and oppression, and any violation of their fundamental rights, either by act or omission, shall be punished according to the terms of the law"*.

Equity between men and women is also provided for in laws that ensure the participation of women in political parties. Law 9,504/97 determined that, in the 1998 elections, a minimum of 25 percent and a maximum of 75 percent of seats for political parties should be held by candidates of each sex. After 1998, these figures increased to 30 percent and 70 percent respectively. In practice, as the number of women in the political scene is considerably low, the minimum percentage applies to women and the maximum percentage to men. Even if the minimum percentage of 30 percent is not met by women, the political party is not allowed to fill up the seats with men, since the maximum percentage for each sex is 70 percent.

*Relevant laws on violence against women in Brazil approved after the Beijing Conference*

*Law 9,099 of 26 September 1995*, establishes Special Civil and Criminal Courts and regulates article 98, item I of the Federal Constitution. This law changed the rites in crimes for which the maximum punishment did not exceed one year. Among these crimes are assault and battery, and threat, the two most common crimes within family environments and intra-family relations. Nevertheless, enforcement of this law to cases of domestic violence has raised controversy in the country. To feminist organizations, the new procedure renders intra-family violence banal, by classifying it as a misdemeanor and ignoring the specificity and customary recurrence of crimes committed within the family.

*Law 9,318 of 5 December 1996,* added item "h" to paragraph II, article 61 of the Penal Code, establishing as an aggravating circumstance the fact that the crime was committed against a "pregnant woman".

Special mention should be made to *Law 9,455 of 7 April 1997,* which defines the crimes of torture, and establishes in paragraph II of article 1, that it is a crime of torture *"submitting someone under your guardianship, power or authority, through violence or serious threat, to intense physical or mental suffering as a way of applying personal punishment or measure of a preventive character"*. The punishment increases when the crime is committed against a pregnant woman (article 1, § 4, II). It is also worth recalling that said law does not aim to protect women who are subjected to domestic violence, although it might be used in this regard.

*Law 9,520 of 27 November 1997* revoked article 35, sole paragraph, of Executive Law 3,689/41 (Code of Criminal Procedure), which provided for women's right to press charges. The article established that married women could not press charges without their husband's consent, except when legally separated from him or when the charges were pressed against him.

Finally, mention should be made to *Law 9,807 of 13 July 1999,* which provides for protection and assistance to victims of violence and witnesses under threat. Nevertheless, it is worth emphasizing that the aforementioned law did not specifically aim at protecting women, although it seems to be a valuable instrument that should be better studied and analyzed with a view to its applicability to the problem in question.

**State Laws**

***State Constitutions and laws***

The *right of all to equity without distinction of any nature* is provided for in seventeen State Constitutions, as well as in the Organic Law of the Federal District. Out of these, the Constitutions of the states of Bahia, Amapá, Ceará, Pará, and the Organic Law of the Federal District refer explicitly to the equality of rights between men and women, including through the adoption of State-level measures that guarantee such right. The Constitutions of the states of Bahia, Mato Grosso, Paraná, Tocantins and the Organic Law of the Federal District contain specific provisions relating to combat or prohibit discrimination by reason of sex. The Charters of the states of Espírito Santo, Rio de Janeiro, and Santa Catarina define sanctions against those who engage in discriminatory acts. With the exception of three state Constitutions – Pernambuco, Roraima and Alagoas – virtually all State Constitutions promulgated after 1988 provide for *restraining violence within the domestic and family milieu.*

As regards the protection of motherhood, the Constitution of the state of Pará establishes, in its article 28, paragraph 4, that any natural person or legal entity that disrespects the rights of women, particularly those that protect motherhood, can neither contract with the Public Powers-that-be, nor enjoy tax, credit, administrative or any other benefits or incentives granted by them, and that existing contracts shall be canceled without indemnity should the offense be confirmed. In its article 299, paragraphs II, III and IV, the Constitution of the state of Pará also establishes as duties of the State: to ensure, before society, the social image of women as workers, mothers and citizens, with equal rights and obligations in relation to men; establish and maintain a specific council to deal with women-related issues, with equal participation of representatives of the Executive Branch and civil society; guarantee free access to either natural or artificial birth control methods in public health services and provide counseling with regard to the use, indications, counter-indications, advantages and disadvantages of each of such methods, so that the couple, and particularly the woman, may be able to choose the safest and most suitable method. This same State Constitution also provides for the adoption of special measures to counterbalance and overcome actual inequities, by giving preference to persons who have been discriminated against, in the sense of ensuring their participation in the labor market, as well as in education, health and in the enjoyment of other social rights (article 336, sole paragraph).

In its article 280, sole paragraph, the Constitution of the state of Bahia prohibits, under any circumstance, the requirement of proof of sterilization, pregnancy test, or any other demand that might harm constitutional precepts concerning individual rights, the principle of equity between sexes and the protection of motherhood. The Constitution of the state of Bahia also assigns equal social roles to fatherhood and motherhood. In its article 179, paragraph 1, it establishes that "*the State shall recognize motherhood and fatherhood as relevant social roles and ensure parents the necessary means for access of their children to day-care centers as well as education, health, food and security*". In this regard, article 2, paragraph VII of the Constitution of the state of Minas Gerais defines assistance to motherhood as one of the State's priority objectives.

Special mention should also be made to the Constitution of the state of Rio de Janeiro, which, in its article 335, establishes that State-owned communication agencies, foundations established by the Public Power, or any other entities either directly or indirectly subject to state economic control shall be used so as to ensure the possibility of expression of and confrontation among different opinion trends. It also forbids the dissemination, by government agencies, of advertisement material containing racial, ethnic, religious or social discrimination. This same Constitution includes a specific chapter on women's rights, which establishes that it is the duty of the State to ensure, before society, the social image of women as mothers, workers, and citizens, with equal rights in relation to men. The social image of women will be further detailed in the discussion of articles 4 and 5 of the Convention.

Also worth mentioning is the provision of the Constitution of the state of Tocantins that provides for the protection by the State, through its agencies, of free association for peaceful purposes, particularly with regard to racial, social and religious minorities.

Finally, in accordance with item *d* of the article of the Convention under analysis, it is worth emphasizing that the Constitution of the state of Ceará includes in the organizational framework of the Public Prosecution Service, a Guardianship Council for socially discriminated groups.

**Governmental Actions**

The issues raised by the women's movement with regard to public policies late in the 1970s and early in the 1980s coincide with other claims made by the social movement, which begins to demand social and political citizenship, in addition to participation in and access to public goods and services. In this regard, the gender problem – a result of the mobilization of the women's movement – was gradually incorporated into the demands of social movements as a whole.

This fact gains strength and starts to produce effects on public policies in the mid-1980s – although in a modest fashion – through the establishment of the first State-wide Women's Rights Council of São Paulo. Sometime later, in 1985, the **National Council for Women's Rights** (CNDM)[40] and the first **Special Police Department for Assistance to Women** (DEAM) were created in São Paulo. At present there are 97 Women's Councils in operation in the country – 19 at state level and 78 at municipal level – in addition to 307 DEAMs. Periodic meetings of Women's Councils convened by the National Council for Women's Rights have been held throughout the years, for the purpose of strengthening their political actions and discussing joint strategic activities.

Since its creation, CNDM has focused on keeping women informed, and raising their awareness of their rights through seminars, meetings, production of material and media campaigns. Within the country's re-democratization context, which was started with the establishment of the National Constitutional Assembly, CNDM endeavored to guarantee the rights of women. In November 1985 it launched a nationwide campaign entitled "*A valid Constitution must have a woman's touch*". This campaign, in addition to raising awareness among the female population about the importance of women's rights in the Constitutional Assembly, also publicized the establishment of the Council itself, within the population.

A document entitled "*What needs to be changed*" was also produced as a result of studies, seminars and debates. The document contained proposals to change laws, with a view to eliminating all forms of discrimination against women. Within the scope of the Executive Branch, the document called for the creation of advisory bodies, councils at state- and municipal-level to be jointly set up by the women's movement and governments, aimed at the elimination all forms of discrimination against women and at raising the status of women within Brazilian society. On the other hand, during the same time-period, proposals and projects regarding governmental policies designed for women were less intense in nature, for the main political actions of CNDM were meant, in the Council's first years of existence, as direct intervention in the Constitutional Assembly, by submitting proposals and ensuring advances in the field of women's rights.

The establishment of Women's Coordinating Committees, Programs and Commissions in several Ministries was an important step to include the gender perspective into universal governmental public policies. The **Program for Support to Rural Women** was established in the Ministry of Agriculture in December 1985. The **Committee for Support to Rural Female Workers** was established in the Ministry of Agrarian Reform in February 1986. In 1985 the Ministry of Culture established the **Coordinating Committee for Women's Cultural Policy**. The Ministry of Health established the **Committee for Reproduction Rights** in 1985 and, sometime later, the **Intersectoral Committee for**

[40] CNDM, a collegiate body of deliberative nature, was established by Law no. 7,353 of 29 August 1985, for the purpose of promoting, at national level, public policies aimed at eliminating all forms of discrimination against women and ensuring them conditions of freedom and equality of rights, as well as their full participation in the country's political, economic and socio-cultural activities. The Council is formed by 20 counselors, who are appointed by the President of the Republic for a four-year term. It is worth emphasizing that an Executive Secretariat linked to the State Secretariat for Human Rights of the Ministry of Justice was established on 16 June 2000, by Decree nº 3.511, so as to ensure implementation of the governmental actions under the responsibility of the CNDM. This Secretariat comprises one Executive Secretary, three Program Managers, three Coordinators, and three Assistants.

**Women's Health**, which was restructured in 1996. Finally, special mention should be made to the previously established **Coordinating Committee for Women and Children** of the Ministry of Labor, as well as to the **Program of Full Assistance to Women's Health**, also created within the Ministry of Health Ministry in 1983.

Nevertheless, except for the **Program of Full Assistance to Women's Health** and the **Intersectoral Committee for Women's Health** (CISMU), both within the Ministry of Health, all the other programs, coordinating committees and commissions were deactivated during the Administrative Reform implemented during the Collor administration, which also canceled the projects underway. In 1989, the National Council for Women's Rights had already gone through a serious crisis – which was later overcome – when it lost its financial and administrative autonomy and all the counselors and the technical team resigned from their offices.

The crisis in the **National Council for Women's Rights** led the chairwomen of State and Municipal Councils to set up a **National Forum of Chairwomen of State and Municipal Councils for Women's Rights,** in an effort to consolidate the various policies that were being discussed within the scope of the National Council.

In May 1995, during the preparatory stage for the IV World Conference on Women and following several political activities on the part of the Women's Movement and Congress members, the National Council was restructured. This political and administrative reorganization was largely due to the prestige of the Chairwoman of the National Forum and now Brazil's First Lady, Dr. Ruth Cardoso, who was a member of the Brazilian Committee to Beijing 1995 and of the Brazilian Delegation to Beijing.

The IV World Conference on Women held in Beijing in 1995 represented an important landmark with regard to the political action of several women's movements, of the Brazilian National Congress, particularly of Congresswomen, and of the Executive Branch.

Collaboration between the Government and various women's movements in the preparatory stages for the Conference was consolidated in several meetings, held for preparation of the Brazilian government report, and reaffirmed the commitment to preserve the achievements obtained in previous Conferences and the need to mobilize the resources needed for their implementation.

The countries that attended the IV World Conference on Women have undertaken, five years later, to prepare a governmental report to be submitted to the UN, containing an assessment of the strategies to implement the Plan of Action approved in Beijing. To this end, the Brazilian government has set up a Committee charged with report writing, comprising female representatives of the Executive and Legislative Branches and specialists, among which there are members of the Women's Movement.

The administrative weakness of the CNDM vis-à-vis the social demand requiring immediate implementation of policies that ensured equity between the genders; the fulfillment of the Beijing decisions became evident during the process of report preparation. Thus, again with the support of First Lady Ruth Cardoso (who also chaired the preparatory Committee and the Delegation of the Brazilian government to the Beijing+5) and of the Secretary for Management of the Ministry of Planning, Dr. Ceres Prates, the National Council for Women's Rights was once again restructured. An Executive Secretariat was set up, which enabled a more appropriate institutional arrangement in order to propose, implement and evaluate public policies aimed at promoting gender equity.

Furthermore, through cooperation agreements the Ministry of Planning, Budget and Management provided human and financial resources to several CNDM activities, such as the organization of a Database on Women; the carrying out of two surveys – one on the operation of DEAMs and another on violence against women. An unprecedented initiative was the development, from the gender perspective, of an analysis of the Multi-annual Program – the PPA 2000/2003 –, which was intended to propose actions to promote equitable gender relations within the Brazilian population. Based on this analysis, the CNDM selected 25 Strategic Programs for follow-up purposes. Only two of these 25 programs are directly focused on women: the Ministry of Health Women's Health program, and the Ministry of Justice Program to Combat Violence against Women.

In addition to actions aimed at domestic policies, the National Council for Women's Rights has participated since 1998, in the Special Women's Meeting of MERCOSUR (REM). REM acts as a forum for the presentation o proposals within the framework of MERCOSUR. It comprises Ministries, Secretariats, and Women's Councils o MERCOSUR member countries (Argentina, Brazil, Paraguay, Chile, and Bolivia, the last two in the capacity o observers). The purpose of REM is to establish equal opportunity mechanisms during implementation of the integratio process resulting from the 1991 Asuncion Treaty, to adopt the gender perspective on the basis of the legislation in forc in the States-Parties, and so to contribute to social, economic, and cultural development. Among the different action proposed are: (a) inclusion of the gender perspective in the work subgroups (Industry, Employment and Social Security Health, and Environment) and in the expert meetings on Science and Technology, Governmental Communication, an Education; (b) prevention of sexual harassment in the workplace and in educational institutions; (c) analysis of th gender perspective in relation to macroeconomic policies; and (d) inclusion of the gender perspective into nationa proposals.

Among the efforts to eliminate discrimination against women, two special dates have been incorporated into the national calendar, thereby reaffirming the need to raise public awareness about the equality of rights between men and women, as well as the awareness of rulers and administrators about the need to develop public policies that ensure women's rights, as an expression of the guarantee of universal human rights.

**International Women's Day**, which is celebrated on 8 March, has been adopted by the Executive Branch in the context of elimination of all forms of discrimination against women. In 1985 the celebration was incorporated into the calendar of both public and private schools. In the Legislative Branch, both the Federal Senate and the Chamber of Deputies have held, every year, a joint Solemn Session in honor of women.

As for concrete political actions, 8 March is a date of landmarks. In 1996, the CNDM/MJ signed cooperation protocols with the Ministries of Labor, Health, and Education. The protocols were renewed on 8 March 2000. In 1997, CNDM prepared and delivered to the President of the Republic a document entitled ***"Equity Strategies – Plan of Action to implement the commitments undertaken by Brazil in the Fourth World Conference on Women"***. In 1998 the President of the Republic sanctioned the National Program for the Promotion of Equity in the Public Sector (Report to the President nº 119 of 5 March 1998). Also in 1998, CNDM and the former Ministry of Administration and State Reform entered a partnership to implement said Program. In 2000, the CNDM/MJ signed a protocol of intention with the then recently-established Ministry for Agrarian Reform, with the objective of gradually increasing the number of positions held by women at all hierarchical levels.

In addition to 8 March, another date connected with the celebrations sponsored by women's movements has been incorporated into the actions of both the Executive and Legislative Branches through CNDM: 25 November, the **International Day to Fight Violence Against Women.** Campaigns aimed at combating violence against women are held on a regular basis through seminars, meetings, courses, posters, outdoors, and advertisement. Also on that day, speeches are delivered in the National Congress, Legislative Assemblies and City Councils.

The labor issue is one of the major concerns and one of the main fighting platforms to the many women's movements. There has been a historical devaluing of the so-called women's jobs in relation to those jobs associated with men. But positive changes have taken place in the past years. According to data from the Nationwide Survey by Household Sampling (PNAD), in 1993 women's salaries corresponded to 49.4 percent of men's salaries; in 1999 this percentage increased to 60.7 percent. Nevertheless, the discriminatory character of the labor market is still a reality. In tune with this fact, the **Work Group for Elimination of Employment and Job Discrimination** (GTEDEO) – a tripartite body formed by representatives of the Federal Government, labor unions and employers' associations – was established within the Ministry of Labor in 1996.

The Work Group initially defined programs of action to combat employment and job discrimination involving the following themes: race, gender, age, and physically disabled persons, among others, based on the principles of Convention 111 of the International Labor Organization (ILO). A project to create Centers for the Promotion of Equal Opportunities and Combat Employment and Professional Discrimination was later developed within the Ministry of

Labor and Employment, as a result of discussions held within the GTEDEO. These Centers sought to interfere in the prevailing cultural pattern by holding and participating in seminars and workshops aimed at raising society's awareness about and sensitizing it to the forms of discrimination that pervade job relations and that might affect women, Afro-Brazilians, physically disabled persons, and other groups, as well as providing assistance to the victims of discrimination.

Of all governmental agencies, the Ministry of Agrarian Development was the one that showed the greatest concern about gender issues. In this regard, an innovative pilot-project involving political actions taking into account the gender perspective is being developed within the aforementioned ministry: The **Program of Affirmative Actions**, which adopts the gender, race, and ethnical perspective (Administrative Rulings nº 33, 120, 121, 201, and 202, and Resolution nº 8 of 2001). In order to enforce the existing legislation on the subject, on 8 March 2002 Agrarian Reform Minister Raul Jungmann signed an Administrative Ruling establishing that the title-deed of rural land was to be issued in the woman's name. From that date onwards, women may even apply for bank financing.

The Program of Affirmative Actions of the Ministry of Agrarian Development, which is intended to promote equal opportunities for its male and female employees and between male and female beneficiaries of the agrarian reform, comprise the following actions, among others:

- Defining quotas to ensure that 30 percent of management positions will be held by women by the year 2003;
- Defining quotas to ensure that 30 percent of management positions will be held by Afro-Brazilian men/women by the year 2003;
- Providing specific training on social and gender management to 30 percent of all male/ female employees, thereby establishing a culture of prejudice elimination in the work place;
- Establishing the Technical Chamber of Social Policies with gender sub-chambers, within the National Council for Sustainable Rural Development (CNDRS);
- Supporting diagnoses on data disaggregated by sex and race, based on which Ministry actions will be planned;
- Establishing the Women's Forum of the National Institute of Colonization and Agrarian Reform (INCRA) in all the states of the Federation, with a view to implementing project policies on employment and income generation for rural female workers at local level, including access to credit lines of the National Program to Strengthen Family Agriculture (PRONAF);
- Giving the theme wide publicity, in order to render managers and authorities sensitive to it, and increase appreciation for male/female employees;
- Establishing a Center for Agrarian Studies on Gender, Racial and Ethnical Issues, for the purpose of promoting multidisciplinary research on gender, racial, and ethnical relations in agrarian reform settlements, in family agriculture, and in institutional surroundings;
- Ensuring approval by the National Council for Sustainable Rural Development, to resolutions changing procedures for beneficiary selection, so as to facilitate the access of women to land and credit, as well as replacing the term "housewife" when referring to women, in order to guarantee their social security rights.

Along the same line, it is also worth mentioning the recent adoption of quota policies within the Ministry of Justice -- through Administrative Ruling nº 1.156 of 20 December 2001 – at the Federal Supreme Court, and in some universities.[41]

**Public policies vis-à-vis gender violence**

By establishing the **National Human Rights Program** (PNDH) through Decree nº 1.904 of 13 May 1996, the President of the Republic determined the adoption of measures to guarantee the defense and promotion of such rights, including the search for equity and the combat against discrimination. The PNDH, which was developed by the Ministry of Justice in partnership with several organizations of civil society, evinces the Federal Government's concern about preserving minimum citizenship guarantees to the population, and reflects the commitments undertaken by the Brazilian government at international level. Actions foreseen in the PNDH are primarily based on principles defined by the International Pact on Civil and Political Rights, and include several measures in the field of civil rights which have decisive consequences on the actual protection of social, economic, and cultural rights. In this regard, implementation of international conventions on women's rights provides the basis for proposed actions that protect their rights.

**The National Women's Rights program,** which was developed under the coordination of the **State Secretariat for Human Rights,** emphasizes, in a chapter dedicated to women, the following goals to be achieved by the Brazilian government:

a) Support to the Federal Government's National Program for Combating Violence against Women;

b) Encourage the establishment of integrated centers of assistance to women exposed to domestic and sexual violence;

c) Support the policies of state and municipal governments aimed at preventing domestic and sexual violence against women;

d) Encourage surveying and dissemination of data on violence against women and all forms of protection and promotion of women's rights; and

e) Revise the procedures to combat violence and discrimination against women and support, in particular, the governmental project that treats rape as a crime against the person and no longer as a crime against custom.

The National Council for Women's Rights (CNDM), which is linked to the Ministry of Justice, has been active in establishing agreements with state and municipal governments, as well as with non-governmental organizations and private companies, for the purpose of National Human Rights Program (PNDH) implementation, emphasizing the importance of gender violence prevention. In this regard, some initiatives deserve to be mentioned:

- The **National Program for the Prevention and Combat of Domestic and Sexual Violence** was developed by CNDM in 1996 as an integral part of the PNDH and of the document on Strategies for Equity. Its main objective is to mobilize inter-ministerial actions aimed at the combat against domestic and sexual violence, whilst observing the competences of federal, state and municipal spheres, and defining the terms of cooperation and agreements wherever necessary. To this end, the Program proposes the coordination of inter-ministerial actions, the amendment of Penal Code provisions, the strengthening of the legal-police apparatus, and the promotion of campaigns for public opinion awareness;

[41] See "Ministério da Justiça cria cotas para negro, mulher e deficiente" (Justice Ministry establishes quotas for Afro-Brazilians, women, and physically disabled persons" (Folha de São Paulo newspaper, 20.12.01); "Edital do STF prevê reserva de 20% das vagas para profissionais negros" ("Federal Supreme Court establishes that 20 percent of all job openings be set aside for Afro-Brazilian professionals") (Folha de São Paulo newspaper, 08.01.02); Rio dá a negros e pardos 40% das vagas (em Universidades públicas) (Rio gives Afro-Brazilians and Mulattos 40 percent of places (in public universities). Folha de São Paulo newspaper, 10.10.01).

- The ***disque-denúncia*** **(dial-a-crime),** a telephone service created by the Ministry of Justice within the context of PNDH to record cases related to child prostitution and porno tourism. The service has already caused the shutting down of some nightclubs where this type of sexual exploitation occurred;

- ***TV Escola*** **(TV School)**, which was created by the Ministry of Education, disseminates procedures for the defense against domestic and sexual violence;

- The campaign entitled **"Without Women the Rights are not Human"**, which was launched by the CNDM in partnership with the Latin American and Caribbean Committee for the Defense of Women (CLADEM) and other entities in 1998, during the celebration of the 50th anniversary of the Universal Declaration of Human Rights;

- The campaign entitled **"We have the right to a life without violence"**, which was launched in 1998 by the State Secretariat for Human Rights, an agency of the Ministry of Justice linked to United Nations agencies and to women's organizations and entities with the aim of preventing intra-family violence, which affects especially women and children. This action led the government and civil society organizations to sign the Pact against Intra-Family Violence;

- The **Technical Rule on the "Prevention and Treatment of Injuries Resulting from Sexual Violence against Women and Adolescents"** developed in 1998 by the Ministry of Health, which regulates article 128 of the Brazilian Penal Code, more specifically its paragraph II, which provides for rape-related abortion;

- Request for **inclusion in the 1999 Master Budget of US$ 10.500.000,00, approximately, for the construction and upkeep of 15 shelters for women victimized by violence.** The request was an initiative of the Human Rights Committee based on a proposal of CNDM and of the Women's Center for Studies and Advisory (CFEMEA), a non-governmental organization. The amount earmarked for the construction and upkeep of shelters in 2001 is of R$ 780.448,29. In 2001, CNDM identified 47 shelters, construction and maintenance of which rely, mostly, on the financial support of the Federal Government;

- Actions of state and municipal authorities to fight gender violence, such as the establishment of **Councils for Women's Rights**, which provide legal orientation and specialized psychosocial assistance to victims of domestic and sexual violence; and

- Implementation, by the State Executive Branches, since 1985, of **Police Departments for Women's Defense**. This is the most important public policy regarding violence against women since, through the offer of specialized and specific assistance to women and girls victimized by violence, the special police departments have encouraged women to report acts of violence against them, and have given greater visibility to the phenomenon of gender violence, especially domestic and intra-family violence.

**Judicial Measures**

Notwithstanding the efforts of legislative measures and governmental actions adopted to eliminate discrimination and promote equity between men and women, the prevalence of discriminatory infra-constitutional laws concerning women is also conditioned, for the most part, to the judicial measures adopted in relation to the theme.

It is worth mentioning that, as a result of Law 9,099/95, which created the Special Criminal Courts, difficulties of access to justice and the slowness of courts were to some extent overcome, regarding misdemeanors. It is also worth emphasizing that most of the crimes committed within the family and in domestic environments are covered by this law. Nevertheless, serious distortions have occurred in the enforcement of this law, in the sense that this kind of violence has become trivial and banal, as explained in the comments at the end of this section.

Decisions made by some national courts do not always ensure effective protection against acts of discrimination against women. The Judicial Branch, especially regarding crimes against custom, domestic violence and family issues, many times reproduces stereotypes, prejudices and discrimination against women.

It is worth emphasizing that the content of sentences sometimes fail to contemplate in an adequate manner the constitutional principle of equity and non-discrimination. Nevertheless, there are model sentences that seek to incorporate the parameters of justice of international human rights treaties concerning violence against women, particularly domestic and intra-family violence, such as the following sentence regarding rape within the family scene:

**Criminal Appeal on the Merits of Case n° 3.156/99 - São Félix do Araguaia**

**REPORT.** J.A.P. ... was accused **of infringing the rules** provided for in articles 213, 224 item "a", and 71 of the Penal Code, for having allegedly constrained M.D.F.(1) and M.D.F.(2) to carnal knowledge through serious threat and presumed violence. At the time, the victims were his stepdaughters and under 14 years of age. The facts that led to the police inquiry and later to charges by the Public Prosecution Service had allegedly occurred late in 1993 or early in 1994; however, they were only reported four years ago, through the official documents of the Guardianship Council for the Rights of the Child and the Adolescent of the town of Alto de Boa Vista, a municipality of the district of São Félix do Araguaia, dated 22 June 1998. In said documents the Council reported the testimony of the victims, and pleaded for action, in view of the existence of typical conducts allegedly perpetrated by the defendant against the two sisters. (...) **VOTE.** The document describes a case of rape committed by the defendant/appellant, against M.D.F.(1), who was then under 14 years of age, the typical facts of which only became public four years after the carnal constraints had taken place; by then the victim had already been engaged in a stable union for at least three years with J.R.S., with whom she has two children. Testimonies given during the inquiry stage indicated that both the victim's biological father and mother had for long been aware of the facts, but chose not to report them to the competent authorities. I also wish to record that the reports that motivated the present criminal action only came to light as a result of aggravation of health conditions and subsequent death of M.D.F.(2), who was also a victim, and whose *causa mortis* was allegedly attributed to the series of carnal constraint equally held with her former stepfather, now the appellant, although court records contain no circumstential evidence in this regard. (...) When heard at the police station, the defendant did not deny having had sexual intercourse with the victim, his stepdaughter. He just insisted it was not rape, since the victim had allegedly consented to the act. He said "that the accusations against him were in fact true, and that he had had carnal knowledge with his two stepdaughters since 1994..." *"that he had had sexual intercourse with the minor so many times...that he could not precisely say how many times it had happened...that he had beaten M. only once..."* (pg. 18 and 18 back). (...) I therefore see no defect of consent in the evidence collected by the police against the defendant, which I consider good and valid for all legal purposes, including on the following jurisprudential grounds: *"Obviously, the victim's testimony, as generally happens in crimes against custom, emerges as an evidence of high value. Especially in view of the fact that they are perfectly in tune with the elements of conviction contained in the records and find echo in the defendant's extra judicial confession, which is also supported by the remaining pieces of evidence. Although retracted before the court, one cannot disregard the defendant's previous voluntary confession, and it is never too much repeating that the confession of authorship is worth not for the place where it is made, but for the force of persuasion it contains"* (TJSP - RT 625/275). (...) The conviction is therefore correct and deserved, but before examining the first degree *decisum* regarding the applied punishment, I should once again emphasize that it is high time for the country to adopt a State policy aimed at preventing crimes such as the one now under consideration. The State must treat with severity the causes that encourage criminality, and not just provide prophylactic treatment to the consequences. The ignorant and despotic macho behavior culturally embedded in most citizens must be eradicated. Likewise, monocratic judges and Collegiate Bodies should apply, with the force of constitutional matter, those international treaties that were ratified by our country, particularly those relating to the protection of human rights. An example of this kind of initiative is the Belém do Pará Convention, which was adopted in June 1994 by the General Organization of American States (OAS) and from which resulted a legal instrument aimed at preventing, punishing and eradicating violence against women. This instrument has binding legal force i.. Brazil, where it was ratified on 27 November 1995, as professors Silvia Pimentel, Ana Lúcia Schritzmeyer and Valéria Pandjiarjian recall in their book *"Estupro: Crime ou Cortesia" (Rape: Crime or Courtesy,* (Sergio Antonio Fabris publishing house, 1998, page 49), which counted on the valuable collaboration of Chief Judge Shelma Lombardi de Kato, speaker of this house. (...). In tune with the above-mentioned facts, and in accordance with the judgment, I vote for the denial of appeal on the merits of the case". ***Chief Judge Rubens de Oliveira Santos Filho.***

The thesis of ***self-defense of the honor*** is still sometimes advocated to acquit men accused of assaulting or murdering women, although it has, to a great extent, been abolished from our courts. A brief survey of the main jurisprudence journals countrywide indicated that in June 1999 they presented only 15 higher-court decisions related to this type of crime. Of these 15 decisions, 11 did not accept the thesis of self-defense of the honor, two accepted it in theory but not in practice, and two accepted it fully. Some of these decisions are reproduced below:

- **Acceptance of the thesis of self-defense of the honor**

**CASE 1 (Appeal 633,061-7, 06/12/90, Criminal Court of São Paulo)**

***Abstract***: Assault and battery against the concubine, who confessed to her partner having been unfaithful to him. The Criminal Court of São Paulo sustained the decision of the lower court judge, who accepted the thesis of self-defense of the honor pleaded by the defendant who, taken by violent emotion, with moderate repulse and in tune with his reality, assaulted and battered his concubine.

***Significant arguments***: *"In view of the fact that the woman confessed to adultery, there is no reason to foresee any bias in the judgment of the Lower Court Judge in accepting the thesis of self-defense of the honor. The decision now under appeal is in tune with the social reality and does not allow for reversal of judgment. The evidence is determined in the sense of proving that N. was adulterous, in spite of the* ***concubinage****, which does not exclude the duty of reciprocal faithfulness. (...) Although hurting or killing a wife or concubine on the grounds of her unfaithfulness can be currently regarded as an archaic prejudice, in the case in question the honor of the appellant was soiled maculated by the admission of the longtime lover, that she had betrayed him with another man. Furthermore, one cannot neglect the fact that, despite the illegality of the union, the couple has four children".*

**CASE 2 (Appeal 137,157-3/1, 23/02/95, Court of Appeals of the State of São Paulo)**

***Abstract***: The defendant, upon catching his wife in a situation of adultery, killed her along with her lover. The thesis of self-defense of the honor was accepted by an impressive majority of members of the jury and confirmed by the Court of Justice of São Paulo, which rejected the appeal of the Public Prosecution Service and sustained the jury's decision.

***Significant arguments:*** *"Antonio, whose honor had been previously wounded, who had been made fun of, and was now being called a cuckold by local people...could hardly foresee what lay in store for him. Upon entering his house he saw his wife and J.J. sleeping soundly, half-naked, on own his bed and in the presence of his son, whose cradle was in the same bedroom...Had he chosen to leave the house without doing what he did, his honor would have been indelibly jeopardized. One should not neglect the fact that the defendant grew up in a different time, during the 1920s and 1930s, when morals and customs were different and maybe stricter than today, but that those same morals and customs were certainly deeply embedded in his character and had shaped his personality with permanent future reflexes. All of these evidences have probably been analyzed before or by the jurors, in addition to the fact that the lay judges, who are members of civil society, represent, in the trial by jury, the average morals of such society...Of course, it is known for a fact that the issue of self-defense of the honor is not new. Nevertheless, this does not make it less up to date. The subject is not peaceful - neither in doctrine nor in jurisprudence. (...) Adultery in general, at all times and under every law – from the most primitive to the most modern – has always been considered a crime, an immoral and anti-social behavior. (...) The crime of adultery does not occur only in relation to the individual, but also in relation to the norms and conduct of the social group. Personal reaction is moved by a clear social load. The individual reacts on account of his dignity, and also on the basis of the common feeling of community values. He/she reacts because honor can only exist and be understood under a double-nature perspective and as a duty to oneself and to society. In the fight for his/her right, the individual could not behave differently as a person and as a member of a group in a given organized community. A social entity governed by values that emanate from the norms of culture and its rules of conduct and that relate to their basic principles...(...) Those who act in defense of their moral personality, in any of its aspects, serve as true instruments of defense of society itself by combating felony, violence, and injustice through the very act in which they occur. (...)".*

*Dissenting opinion: "... What occurs in the allegcd self-defense of the honor is the sacrifice of humanity's supreme asset – life – in view of mere prejudices that pervade some layers of society... 'Honor is a personal attribute, independent from an act by a third party, and for this reason it is impossible to admit that a man has been dishonored because his wife is unfaithful'... 'Law and morals do not allow women to violate their duties. But denying her the right to live is the quintessence of cruelty.'".*

- ***Acceptance of self-defense of the honor in theory but not in practice***

**CASE 3 (Appeal 75,026-3, 02/05/90, Court of Appeals of the State of São Paulo)**

***Abstract:*** The defendant killed his adulterous wife. The defendant was acquitted by the jury, which accepted the plea of self-defense of the honor. Nevertheless, the Court of Appeals of the State of São Paulo, albeit having recognized that such exculpation was admissible in theory, decided that it did not apply in the case in question, in view of the absence of *flagrante delicto*.

***Significant arguments:*** *"The possibility of self-defense of the honor cannot be repelled on the basis of prejudice in cases such as the one in question. There are dissenting opinions in the jurisprudence on the matter..." 'There is no denying that court decisions have accepted the thesis of self-defense of the honor when the spouse who has been offended kills the other spouse or his/her partner. Nevertheless, as a rule, these decisions display a constant requirement: flagrant adultery'... Well, in the present case, the repulse was not immediate...*

**CASE 4 (Appeal 11,266, 02/03/88, Court of Appeals of the State of Espírito Santo)**

***Abstract:*** The ex-concubine did away with the victim under the allegation that he had lost his head given her insistence in saying that she was going to sleep with someone else. The jury accepted the plea of self-defense of the honor. The Court of Appeals of the State of Espírito Santo did not recognize this exculpation in the case, and decided for a retrial.

***Significant arguments:*** *"...The decision of the jury to accept the plea of self-defense of the honor clearly contradicts the evidence contained in the records and therefore gives rise to disqualification of the plea, considering that the defendant no longer lived* ***in concubinage*** *with the victim, whom he savagely stabbed to death under the allegation that he had lost his head..."*

- ***Refusal of self-defense of the honor***

**CASE 5 (Apeal 279/81, 11/10/89, Court of Appeals of the State of Paraná)**

***Abstract:*** The defendant, based on her suspicion that the spouse was being unfaithful, shot and stabbed him to death. The jury accepted the plea presented by the defense – self-defense of the honor. This, in view of the absence of a concrete, actual and imminent event, was considered unacceptable in the present case by the Court of Appeals of the State of Paraná, which decided to submit the appellant to retrial.

***Significant arguments:*** *"To defend the duty of faithfulness, the betrayed spouse may resort to actions provided for by the law, i.e., the dissolution of marriage, in the civil court, and adultery, in the criminal court. Violent death as an answer to adultery, let us face it, is an unacceptable reaction under the principles of the Criminal Law... The passionate wife murderer could take advantage, if so, of sentence reduction provided for in paragraph 1 of article 121 of the Penal Code, but not of self-defense.(...)".*

**CASE 6 (Appeal 73.966-3, 28/03/90, Court of Appeals of the State of São Paulo)**

***Abstract:*** The defendant killed the concubine with whom he had been living for a short time. Informed by the victim's sister that she was going to meet another man, he lost his head, went to the bar where the victim was and shot her to

death. The jury acquitted the defendant on grounds of self-defense of the honor. By understanding that the decision clearly contradicted the evidence contained in the records, the Court of Appeals decided for a retrial.

***Significant arguments:*** *"The doctrine and jurisprudence have long understood that honor is an extremely personal attribute that cannot be transferred from the person who possesses it to whomever, whether on a regular basis on not, lives with him/her. This understanding, which was already recognized in the past, gained increased relevance after the enforcement of the Federal Constitution of 1988, according to which in a relationship between couples, the rights and duties of men and women are indisputably equal".*

**CASE 7 (Appeal 46.069-1, 22/11/90, Higher Military Court - Federal District)**

***Abstract:*** Soldier killed his wife and a colleague, thinking they were lovers, with a corporate weapon. The Military Jury sentenced the defendant to 15 years of imprisonment for homicide and use of corporate weapon. Both the defense and the prosecution appealed against the decision. The Higher Military Court in the Federal District, rejected the appeal of the defense, and accepted the appeal of the Military Prosecution Service, having sentenced the defendant to 25 years in prison and rejected the thesis of self-defense of the honor claimed by the defense.

***Significant arguments:*** *"... The defense, by supporting the plea that the defendant had acted in self-defense of the honor, claimed that, in relation to his wife's death, the defendant, who was experiencing an extremely violent moral and social trauma, was taken by intense emotion when, during an argument with her, he was called a "cuckold"...(...). eyewitnesses to the crime, both for the prosecution and the defense, had nothing to say against the behavior of the victim, and even attested to the good relationship of the couple...(...) The thesis alleged by the illustrious defender regarding self-defense of the honor is not contained in these records and, even if it were, it would not exclude the illegality of that conduct..."*

**CASE 8 (Special Appeal 1,517, 11/03/91, Superior Court of Justice)**

***Abstract:*** Double-homicide committed by the husband who caught his wife *in flagrante*. The jury acquitted the defendant by accepting the plea of self-defense of the honor. The Court of Appeals of the State of Paraná confirmed the decision of the jury of the town of Apucarana; however, the Attorney General's Office filed a special appeal and the Superior Court of Justice rejected the thesis of self-defense of the honor, which clearly contradicted the evidence contained in the records, and decided for a retrial. (Information on the outcome of this case: the jury, on grounds of self-defense of the honor, once again acquitted the defendant).

***Significant arguments:*** *"...self-defense of the honor, as typified in article 25 of the Penal Code, presents inflexible rules and is accepted only when the agent 'through the moderate use of the necessary means repeals unfair, actual or imminent assault against himself/herself or against a third party'. The assumptions contained in the records would never admit a reaction on the part of someone who, believing that his honor has been harmed, instead of resorting to the civil acts of separation and divorce, chooses to kill his wife, or her partner, or both, in a totally reproachable behavior, since it was the woman who, by committing adultery, had failed to preserve her own honor. (...) Well, in Brazil we do not resort to the customary law – should we intend to justify the husband's action based on the assumptions contained in the records – just because the jurors, who are common people, have so decided. Upon providing for self-defense, the positive law restricted its use, which is not so flexible as to cover any offense.(...) ... Magalhães Noronha, quoting Leon Rabinovicz: 'it is macho pride that has been hurt'...(...) Among foreign authors, special mention should be made to Jimenez de Asúa...'no existe ese honor conyugal. El honor és personal; el honor és próprio. El hombre que así reacciona, o que sigue esa norma - y muchos han matado a la mujer porque no habia más remedio para conservar un falso credito -, han realizado el acto acaso en un momento de transtorno mental transitorio, motivados por celos agudissimos; pero no és possible hablar aqui de defensa personal'.*

*... what we have here is the privileged form...*

*Dissenting Vote: "The rule of law needs to be construed on a cultural basis. It is true that consistency, from a dogmatic standpoint, needs to be observed. Nevertheless, it is impossible to neglect the value-related aspect that the crime implies... some authors and even some jurisprudential decisions consider that it is possible to accept the thesis of self-defense of the honor when the person who possesses this honor reacts in order to cease the assault when such value is at stake. Marriage implies reciprocal obligations. One of them being faithfulness, from the conjugal standpoint...(...) While judges abide more by the formal, dogmatic aspect of the rule of law, the jurors -- lay persons who are not necessarily experts in law -- judge according to the rules of life, the rules of culture, the historical demands of a given moment. Judges adjust men to the law. Jurors adjust the law to men.(...)... The cultural aspect has to be construed according to the place where the fact occurred. If in such place it is understood that the honor of the husband so maculated gives rise to or authorizes a violent, extreme reaction – which goes against my personal opinion – such is the understanding of the jury.(...) We cannot say that the jury has made a mistake. We can say that it misjudged the case. It was expressing a feature of Brazilian culture.(...) The interpretation in Brazil is controversial. While Your Excellence (the rapporteur) and so many others understand that the interpretation should be merely dogmatic, formal, there are others – the jurors – who seek to interpret the case from a standpoint of material justice. Under article 25, this moderate reaction is contained even in the 1940 preamble. It is not mathematically measured, but rather analyzed according to the principle of action and reaction".*

(...)

**CASE 12 (Appeal 9.029-1, 03/03/94, Court of Appeals of the State of Paraná)**

***Abstract:*** The defendant killed the woman with whom he had lived for about 20 years as if they were married, after catching her coming out of a dance parlor accompanied by a person with whom she was having an affair. The jury sentenced him to six years in prison plus eight months of semi-confinement. Discontent with the jury's decision, the defendant appealed by alleging that the understanding of the jurors contradicted the evidence contained in the records, and required a retrial. The Court of Appeals of the State of Paraná sustained the sentence passed by the jury.

***Significant arguments:*** *"The decision of the jury to, based on the defendant's confession, acknowledging the thesis of excusable homicide and rejecting the self-defense plea is actually irreproachable and in keeping with the understanding that the concept of honor, which is highly personal, is not in accord with the act of unfaithfulness committed by the woman, and does not give the male the right to take her life, even in view of the fact that an outburst of anger resulting from lack of emotional control might alleviate the degree of disapproval of the conduct".*

**CASE 13 (Written appeal 97.006669-4, 23/09/97, Court of Appeals of the State of Santa Catarina)**

***Abstract:*** The husband, suspecting that his wife was being unfaithful, shot her on the back. Indicted for murder, the defendant filed an appeal aiming at his acquittal or, alternatively, at the disqualification of the crime to involuntary manslaughter and, ultimately, at the acquittal in law, on the grounds that he had acted in self-defense of his honor, always claiming that he had been moved by an outburst of violence. The Court rejected the thesis presented by the defense, and determined the indictment of the defendant and his consequent trial by jury.

***Significant arguments:*** *"The possibility of self-defense of the honor is controversial. Personal dignity, good repute, and honor are rights that might be defended, but the repulse of the injured party should always abide by the limitations provided for in article 25".*

(...)

**CASE 15 (Appeal 98,000047-5, 18/06/98, Court of Appeals of the State of Alagoas)**

***Abstract:*** Husband killed his adulterous wife by shooting five times at her. The defendant was convicted by the jury, which rejected the thesis of self-defense of the honor. Despite appeal by the defense, the Court of Appeals of the State of Alagoas sustained the jury's decision.

***Significant arguments:*** *"It is the adulterous spouse who loses her honor, and therefore the husband who shoots his unfaithful wife is not acting in self-defense of the honor, since it is the adulterous spouse who loses the honor, and not the innocent one".*

- ***Report to the Inter-American Human Rights Commission***

It is our duty to inform, with reference to the theme of violence against women, that the **Center for Justice and International Law (CEJIL-Brazil)**, together with the national section of the Latin-American Committee of the Caribbean for the Defense of Women's Rights **(CLADEM-Brazil)** have filed a petition against the Brazilian State with the **Inter-American Human Rights Commission**, regarding the case of Maria da Penha.

In 1983 Maria da Penha's husband attempted against her life. He shot her on the back, and the injury left her paraplegic. Although convicted by national courts, he was never arrested and the case is still under analysis, due to the successive appeals filed against the jury's decision.

Eighteen years after the crime was committed, ***the Inter-American Human Rights Commission condemned the Brazilian State for negligence and omission in relation to domestic violence and recommended payment of indemnity to the victim by the State.***

**Factors and Hindrances**

Several complex factors hinder effective implementation of the Convention and of other international instruments on human rights aimed at protection of the rights of women and girls.

Conservative and discriminatory laws on gender, which are inadequate and insufficient, still pervade the judicial universe. Most discriminatory infra-constitutional laws governing matters related to women's rights date back to the beginning of the 20th century, and are aimed more at "controlling" human sexuality and reproduction than at regulating and encouraging their free and responsible exercise, in tune with the plural and democratic values of contemporary society. It is worth mentioning that most of these discriminatory provisions are present in our Civil Code (1916) and Penal Code (1940), which were inspired by Western European laws, especially the Napoleonic, Italian, and German Codes, as well as others developed in societies and historical times that do not correspond to the present Brazilian reality.

The presence or absence of such discriminatory provisions in our domestic laws are due to a correlation of political forces involving several social players. There is a socio-judicial-political and ideological culture in our country that needs to be changed. This change in culture has been gradually happening. It requires the eradication of social stereotypes, prejudices and forms of discrimination, especially regarding gender, race/ethnics, and socio-economic inequality, which have an impact on institutional actions. Therefore, it also requires social respect for diversity, legislative and executive actions that are in tune with the values of equity and respect for differences and, ultimately, it depends on the stand taken by the Judiciary branch which, according to the law, in concrete cases and particularly in legal acts related to community and/or diffuse rights, might produce an "*erga omnes*" effect (an overall effect).

In this regard, the political-judicial performance of the Federal Supreme Court is of fundamental importance, not only because it is the highest jurisdictional body to decide on constitutional matters, but also because it has specific competences to try cases related to such matters, including direct actions on the constitutionality and unconstitutionality of laws, with an impact on the country's legislative outcomes.

Discrimination against women, especially after the ***association of sexuality with reproduction***, reinforces an ideological fabric aimed at controlling a woman's life and her body. It is the product of patriarchal societies, which still recognize the dichotomy between public and private, the latter understood not as individual, but rather as a family affair, underlying which rests the power of the male head of the household. A situation which is still present in many

legal infra-constitutional provisions, despite the advances defended in the Federal Constitution of 1988 in relation to equity between men and women.

With reference, specifically, to the theme of violence against women, in Brazil it is believed that most women do not report cases of sexual violence, either out of embarrassment or fear, especially when such violence occurs within the domestic or intra-family environment.

Currently known as ***"gender violence"***, physical, sexual, and psychological violence against women is an expression of the historically uneven power relations established between men and women. Its major support and factor of perpetuation lies, therefore, in the cultural domain.

In Brazil, social replies to violence against women began to emerge through the actions of the women's movements in the 1980s, when violence against women started to gain visibility and to be treated as a public policy issue, particularly in the fields of safety and justice. Since then, the debate about this problem has grown through the creation of police stations for the defense of women, awareness-raising campaigns, and the implementation of shelters to assist women at risk. These initiatives have also stimulated the recognition that violence against women also represents a violation of human rights.

Violence against women has no age, social status, ethnical or religious boundaries. It is expressed in different forms, many of which have strong cultural roots (Human Rights Watch, 1995). Among the most frequent forms of violence against women are: assault (beating and homicide); sexual attacks (rape, indecent assault, incest, sexual harassment); and those of emotional nature (threats, deprivation, maltreatment, and discrimination). Brazilian society also lives with other forms of violence that affect women and girls such as, for example, child prostitution.

Although acts of violence against women occur on all planes of social life – whether public (workplace, school, leisure areas) or private (home) – the practices that have gained greater visibility are those that occur in the domestic environment.

Domestic violence may be defined as a perverse and generalized phenomenon that not only affects women but that also spreads throughout all spheres of social life and is singled out as the very foundation of several social problems. Studies have increasingly shown that the combat of violence against women, especially in conjugal relations, should take into account its effects on the dynamics of family relations, such as for example, the socialization of children and adolescents.

In other spheres, violence against women is not associated with conditions such as race, ethnicity, political, ideological, or religious belief, socio-economic condition, etc. The fact is that in the poorest segments of society, this phenomenon is out in the open, due to the proximity to neighbors, as well as to the fact that in more favored groups in social and economic terms, different mechanisms are used to solve problems, such as through private services. Low-income families in general rely only on police stations and public health services for help in cases of domestic violence.

The phenomenon of violence against women, especially when it occurs within the domestic and intra-family environment, has deep and serious consequences not only to its full development, but also to the socio-economic development of the country. The social cost of this form of violence is translated into concrete data. In the *world*, one out of five women's absences from work is associated with domestic violence; in *Latin America and the Caribbean*, domestic violence affects 25 to 50 percent of women and jeopardizes 14.6 percent of the Gross Domestic Product (GDP); in *Brazil*, every four minutes a woman is attacked in her own home by someone with whom she is emotionally involved. Statistics available and the records of police stations specialized in crimes against women indicate that 70 percent of the incidents occur in the family environment, and that the aggressor is the husband or living-in lover; over 40 percent of all cases of violence involve aggravated battery resulting from punching, slapping, enchaining, burning, and spanking. And these forms of violence cost the country 10.5 percent of its GDP.

Miréya Suarez, who has performed academic research on gender in Brazil, states that *"the inequalities are exacerbated as the economies become more aggressive and competitive within the context of globalization, in which salaries become lower and social conditions and labor laws become even more precarious. The effects of these economic changes are generally ignored by lawmakers and are treated as sexually neutral, thus producing an unfavorable impact in relation to women and other groups that fight for equality".*

Women have become increasingly important in today's production systems. As the participation of women in the labor market increases, the segmentation of professions by sex (engineering is always associated with men, whereas social work is associated with women) and the imbalance between women and men's wages still persist. Unemployment among women has also increased. The situation of rural and black women is even more serious.

In the field of labor relations, for example, although paragraph XX of article 7 of the Federal Constitution provides for the *"protection of the labor market for women through specific incentives, as provided by law"*, an assessment of data on the wages of male and female workers indicates that gender/color differences critically affect the remuneration paid to women, particularly to non-white women, as mentioned in article 11 of the Convention.

Despite the fact that the Federal Constitution provides for equality between men and women, as well as for the duty of the State to ensure assistance to the family in the person of each of its members, (article 226, paragraphs 5 and 8) and although the Brazilian State has ratified the most important human rights instruments, *to this date there is no specific national law in place to prevent, punish and eradicate domestic violence in the country*. Federal legislation (civil, criminal, and penal procedure laws) and the existing public policies are not yet enough and adequate to face the complex issue of domestic violence, thereby preventing the full participation and fulfillment of women in Brazilian society.

In the past two sessions of the legislature, congresswomen linked to the women's movement submitted bills on domestic violence, based on a proposal developed by CLADEM/BRAZIL. There was, however, resistance to a specific law, under the assertion that the criminal law in force should suffice, for it already provides for treatment of a more grievous nature, when the crime is committed by family members. Furthermore, the innovations contained in the above-mentioned bills were considered unfeasible, for they transcended the punitive criminal sphere by establishing precepts in civil, administrative and labor spheres, and had preventive and assistance-oriented objectives.

Nevertheless, at all three levels – federal, state and municipal – the Brazilian government defined some ***public policies*** aimed at eradicating violence against women.

These policies have been implemented mainly as a result of the increasing mobilization of civil society – particularly women's groups and organizations – and of international entities which, in addition to pressing for and demanding actions have, to a great extent, contributed funds to said groups and organizations. Nevertheless, it is believed that the precarious implementation of the existing action plans is due, in our opinion, to the extremely low allocation of funds and resources to this end.

Brazil still lacks domestic data on the rates of violence against women and girls. This does not mean that the occurrence is not feasible, or that there are no elements for the development of effective public policies to combat the different forms that this type of violence takes in our society. Nevertheless, it does mean that it is impossible to make an accurate assessment of the Brazilian reality within the post-Beijing context, due to the lack of suitable follow-up and evaluation instruments capable of providing national data. Ultimately, the lack of official information on the situation of violence against women hinders the proposition and implementation of national policies to ensure women's rights.

The main obstacle in this regard has been the lack of attention to the problem. This is a feature of a culture of female submission built along the country's history, and it gains even clearer contours in the case of black women, who are described by official social indicators as one of the most discriminated and vulnerable groups of society.

In general, it could be said that, even taking into account the progress achieved in terms of law, in Brazil in the past decades, women are still subjected to discrimination and violence of all sorts, which derive, among other factors, from the legislation in force.

It is worth mentioning, for example, that Law 9,099/95, which applies to misdemeanors and moderate felonies, for which the maximum penalty does not exceed one year in prison, covers most crimes related to domestic violence. Since this law privileges settlement and accord before the Court, and frequently stays the proceedings, this specific form of violence has become increasingly commonplace before Criminal Courts. Therefore, with the aim of putting an end to the slowness of the Brazilian judicial system, this law ended up by benefiting the agents of crimes related to domestic violence, who, in most cases, pay a minimum fine in punishment for his/her crime, and walk out without a criminal record.

It is important to notice that no law in the country refers to ***psychological violence***, which is provided for in the Inter-American Convention to Prevent, Punish and Eradicate Violence against Women (Belém do Pará Convention – 1994). This form of violence, subtle and difficult to prove, is very common and sometimes even more harmful than physical violence itself. This fact reinforces the need to develop a specific law on violence against women, which occurs mainly within the family environment.

The Brazilian Penal Code (1940), as well as the Civil Code (1916), reproduce anachronistic and discriminatory principles, even by resorting to terms such as women's "honesty" and "virginity". A bill to amend the Penal Code has already been developed but not yet submitted to the National Congress. The New Civil Code has been approved and sanctioned by the President of the Republic, but still awaits the expiration of the *"vacatio legis"* period, in order to come into force.

Albeit relevant, governmental measures adopted within the scope of the Brazilian Executive Branch still represent the initial steps towards actual implementation of the commitments undertaken in Beijing. Most of these measures contain but a formal expression of intents and purposes, which are still far from being implemented in the various Brazilian regions marked by the inequality of living conditions as far as their social, economic, political, and cultural aspects are concerned. The hinterland of Brazil, especially its rural areas, remains totally neglected as regards implementation of these policies. A specific and consistent public policy that includes the issue of violence against indigenous women is still under development.

The country still lacks information on violence against women and girls. Likewise, the gap that exists in the systematic data disaggregated by sex hinders a concrete vision of the phenomenon. This fact, besides contributing to the persistence of the occurrence, also reflects the female submission that pervades our society, of which violence is a direct result.

There are some policies in the fields of education and culture, still very incipient, however, to eliminate the common prejudices and discriminatory practices that are based on stereotyped ideas of female inferiority.

Most health centers are not yet prepared to provide assistance to women victimized by violence – especially rape. As a consequence, the number of public hospitals that provide pregnancy interruption services, as set forth by law is still very small.

Notwithstanding the importance of allocation of funds for the construction of Shelters, they are still insufficient vis-à-vis the demand that exists in the country. In addition, it would be necessary to expand and give greater consistency to the implementation of public policies aimed at eradicating the traffic in women and girls, and at providing assistance to the victims of violence resulting from prostitution and traffic.

With regard to child prostitution, recent studies show that it occurs in various ways among and across the country's regions. In the Northern and Central-Western regions, the traffic in female slaves in the mining area presents an extremely high rate of incidence; sexual tourism is abundant in the Northeast; in the Southeast, the discussion is

focused on the issue of street girls and child prostitution; in the South, the foundation of exploitation lies in the enticement of children and adolescents from the interior, based on the use of false information and abuse of parents' naiveté.

The establishment of ***Police Stations for the Defense of Women*** at state level – the main public policy intended to defend women against violence – represents a valuable symbolic landmark. The cultural and psychosocial role of such police stations is invaluable. Nevertheless, they are not enough in numbers to assist the majority of Brazilian women, for there are at present 307 stations across Brazil, most of which are concentrated in the Southeastern region. Furthermore, several gaps in the services rendered by these few existing police stations show the precarious implementation of this policy and the lack of training on gender issues, of their employees, who many times display prejudice and discriminatory techniques when providing assistance to victims.

As for the ***Executive Branch***, efforts are still insufficient with regard to the development and implementation of public policies that may enhance the roles played by women and the use of their capabilities in equal conditions with men. In this regard, it is increasingly relevant to note that the enforcement of policies to fight discrimination against women in the most varied spheres of society collides with the gender prejudices that value men and disqualify women. As they are deeply rooted into local culture, they are also present in governmental sensitivities (both juridical and administrative), i.e., in the ways that government agents use the vernacular language to interpret and put into practice elements of politics, rules, laws, administrative procedures and other judicial and administrative provisions.

It is therefore necessary to distinguish, in conceptual terms, prejudice from discrimination, considering that, since they are different phenomena, their eradication requires different actions and strategies. Prejudice cannot be curbed because it occurs in an abstract level. Therefore, acting on governmental sensitivities seems to be the most effective way to overcome it. In order to fight discrimination – an act of exclusion – one needs to resort to legislative, executive and judicial measures for intervention in social relations.

The ***Judicial Branch*** in Brazil is not fully structured so as to meet the demands of the majority of the Brazilian population. Access to justice is especially difficult for the lower segments of society. The Judicial Branch, which is structured around a sexist culture, is currently experiencing difficulties to perform its functions. Slowness of the Brazilian judicial system also contributes to the distance that exists between the Judicial Branch and the population.

For example, some rape cases analyzed in a survey carried out in 1998 had exceeded the eight-year period between the initial police inquest and the transit in *rem judicatam* for the final decision. Nevertheless, it is worth mentioning that most of the cases surveyed did not exceed a three-year period.

In crimes related to sexual violence, particularly in the case of adult women, there is sometimes an "inversion". Namely, through the speeches of the defense and the prosecution, victims become defendants and vice-versa. The message conveyed by these agents many times reinforce the idea that rape is a type of crime in which the victim has to prove that she is not guilty, and that she therefore did not contribute to the commitment of the offence.

A survey carried out in São Paulo in 1993, in which judicial proceedings in the family area were analyzed, revealed the predominance of a conservative and patriarchal concept underlying the decisions then under study. According to such a concept, the position of the man as head of the marital partnership remains unchanged, and the woman is a mere collaborator. It embodies the idea of frailty and submission of women, whose behavior is watched over, controlled and classified (e.g., "disorderly conduct", "eccentric behavior"). This, therefore, institutionalizes the inequality of rights and legitimates differentiated juridical treatment to men and women.

Through its actions, the Judicial Branch continues to reproduce, without any criteria, social stereotypes and prejudices, including those relating to gender, that hinder the effective implementation of equity based on principles of solidarity.

- ***Female prisoners***

Specific studies are available on the situation of Brazilian prisons, especially with regard to the exercise of sexuality. The media in general has given much attention to the subject by depicting the precarious conditions for the guarantee of the fundamental rights of both male and female prisoners. In comparative terms, female prisoners have received little attention, since they represent some five-percent of all prisoners, according to a penitentiary census carried out in 1999.

According to a report of Amnesty International – Brazil entitled "Here nobody sleeps in Peace" (1999, page 45), *"The incarceration of women brings about special consequences, although in Brazil neither policies nor the penal practice deals with such factors consistently."* Also in this regard, an expert in the area points out that[42] *"This subject is little known and hardly ever discussed, maybe because, given the culture that prevails in our society, like any other gender-related theme it does not get the attention it deserves. Nevertheless, it is a pressing issue, not only because of the tension it arouses, but also because of the emotional burden it contains and the high degree of rights violation it portrays".*

This lack of interest on the part of society only aggravates the situation of female prisoners, whose rights, such as conjugal visits and appropriate health care are being violated, according to the aforementioned Amnesty International report (pages 45/49).

In the words of another expert,[43] *"the women's rights issue is currently characterized by two major contradictions: a) the coexistence of international and constitutional rules that affirm, in absolute terms, the equality of rights between men and women, and the existence of statutory laws and social behaviors inspired by the old prejudice of female inferiority; and b) the existence of statutory laws that guarantee women's rights but which, nevertheless, remain ineffective because they conflict with the stereotypes of the patriarchal society in which they exist."*

Although an actual right, conjugal visits are not allowed in the women's prisons of São Paulo and, according to a report of the Brazilian Bar Association (OAB) entitled "A Profile of Female Prisoners", (OAB publishing house, 1998), it is known that *"Women are not entitled to conjugal visits in the penal institutions of the state of São Paulo. Depriving female prisoners from exercising their sexuality has led them to change their behavior and sexual choice. Many choose to become bisexual while others opt for celibacy, not out of free will, but because of the circumstances."*

The rights of female prisoners are also being violated with regard to health care. In the Chapter on Medical Services, the United Nations Standard Minimum Rules for the Treatment of Prisoners and Related Recommendations (adopted by Resolution 2858/71 and reiterated by Resolution 3218/74), deals with the specific issues of females prisoners as follows:

*"Penal institutions for women shall have special facilities for the care of prisoners who are pregnant, who have just given birth, and who are convalescing. As much as possible, measures shall be taken for delivery to occur in a civilian hospital. If the child is born in the penal institution, this datum shall not be included in his/her birth certificate."*

*"When the mother is allowed to keep her child, arrangements shall be made for setting up children's facilities (day care centers) with qualified personnel, where the children will stay whenever they are not in their mothers' care.".*

Nevertheless, although provided for, these rules have only been actually adopted in the Capital and Butantã jails, in the city of São Paulo.

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[42] BIERRENBACH, Maria Ignês, *"A mulher presa"* (*"Female prisoners"*) in Textos Reunidos, Ilanud Journal, no. 12, 1998, page 71.

[43] PIMENTEL, Silvia Pimentel, *"Evolução dos Direitos da Mulher: norma, fato, valor"*, (*"Evolution of Women's Rights: norm, fact, value"*), São Paulo: Courts' Journal 1978, pages 3 and 4.

- ***Profile of female prisoners***

In view of the little concern for female prisoners, as described above, there is very little information available on the profile of women under State custody.

The report prepared by Amnesty International informs that: *"In Brazil, female prisoners are generally poor and have a low level of education. More than half the female prisoners in Porto Alegre and 77 percent of such women in São Paulo had not completed their elementary education. Most of them are heads of households, 65 percent are single – most of them with children – and more than half support their families (...). According to these women, being separated from their children constitutes the main source of individual anxiety and, while in prison, their visitors are less frequent than those of male prisoners".*

According to the 1998 report of the Bar Association (OAB) entitled "The profile of incarcerated women", it is known that *"before their arrest, 75.61 percent of women prisoners worked and only 17 percent of them are entitled to unemployment benefits. This is due to the fact that most of these women used to work in the informal market and therefore upon their arrest, they are not entitled to the rights provided for in the law."*

Still according to the aforementioned report *"the household income of 54.88% of female prisoners does not exceed four minimum wages, i.e., their income is indisputably too low to support a family, and this fact could point out to criminality as one of the ways out to solve the basic problem of survival of the household. (...)".*

Another important feature of female prisoners is age. Most of them are young: according to the OAB report, it is known that *"56.9 percent are between 18 and 30 years of age, while 30.08 percent are in their 30s and 40s."*

In consequence, it may be said that the issue of female prisoners in Brazil requires greater concern and assistance on the part of authorities and society. The rights of these women are disrespected and even violated, with their consequent exclusion from society. The rights of female prisoners need to be respected, and have the basic needs provided for in the law assured to them, so as to ensure their best re-integration into society.

- ***Indigenous women***

Special mention should be made to the situation of indigenous populations, particularly with regard to indigenous women.

The rights of indigenous peoples in Brazil are provided for, basically, in three legal instruments. The first such instrument is the Civil Code of 1916, which considers indigenous men and women as relatively incapable individuals, who therefore need to have their rights protected by the State, through the National Indigenous Peoples Foundation (FUNAI).

The second one is the Statute of Indigenous Peoples, Law 6,001 of 1973, which defines the relations between indigenous peoples and the society that surrounds them, with emphasis on the exercise of guardianship by FUNAI. This law is based on the concept that indigenous peoples are culturally inferior and doomed to evolve until they can be assimilated by the society around them and cease to be Indians. As a result, all their rights are considered to be transitional, i.e., they should exist only until assimilation occurs.

The 1988 Constitution – the third legal instrument governing the matter – radically changed the legal bases for relations between indigenous peoples and national society. The new Charter, by granting indigenous peoples respect to their social organization, customs, languages and traditions, has eliminated the assimilation-oriented concept, in behalf of the right to differences. As a consequence, the revision of both the Civil Code and the Statute of Indigenous Peoples has become imperative, and can no longer be postponed.

In the case of the Civil Code, this revision was the object of an instrument recently passed by Congress, which eliminates the reference to the legal incapacity of indigenous peoples, and leaves the definition of possible criteria to deal with legal acts committed by them to be defined by specific laws.

In this regard, the issue of sexual and reproductive rights of indigenous women has not yet deserved adequate attention. Last year, however, through the empowering of the indigenous women's movement and the many reports on the violation of their rights, the matter began to be discussed in public policy-development forums. That was the case, for example, in the Durban (South Africa) World Conference on Racism, to which the Brazilian delegation submitted an official document that clearly mentioned the need to protect the rights of indigenous women, especially where the military are present in indigenous lands. It is worth emphasizing that it was a Brazilian indigenous woman, Azelene Kaingang, who represented the indigenous movement in the Preparatory Committee regarding the participation of Brazil in Durban.

As for the indigenous population, the Brazilian Constitution ensures them the right to education in their mother tongue. The Ministry of Education has supported several initiatives towards the qualification of indigenous teachers, having, to this end, established specific curricular parameters for indigenous schools, aimed at bilingual education. The first university course for the development of indigenous teachers – known as the first indigenous university project – was introduced in the state of Mato Grosso, in 2001. A similar initiative is being developed in the state of Amazonas.

**Governmental Actions**

- **Special Indigenous Sanitary Districts (DSEIs)**

The DSEIs are responsible for ensuring, within the Ministry of Health, the provision of health services, in general, to indigenous peoples throughout the country. The executive coordination of this service is carried out by the Board of Operations of the National Health Foundation (FUNASA), which, in turn, acts through agreements signed with public agencies at state and municipal level, civil society organizations and, many times, indigenous organizations themselves. Nevertheless, within the scope of the Districts, there is not yet a mechanism in place to ensure uniform treatment of sexual and reproductive rights of indigenous women. This may be explained, in part, by the fact that the District system is still new. Furthermore, the country's cultural diversity also makes it difficult to address the theme.

It was only as of the mid-90s that indigenous women began to organize themselves to defend their rights and interests. Several indigenous women's organizations were then created, mainly in the Brazilian Amazon region. This process reached its apex in 2001, through the Meeting of Indigenous Women held in the northern state of Acre which, among other initiatives, defined an agenda for the claims of the women's movement, which had as one of its focal points the issue of sexual and reproductive rights.

Reports that indigenous women are being sexually abused by military men stationed in indigenous lands have been broadly discussed in the past months. The reports concern mainly military units located in the lands of the Ianomami People, in the state of Roraima, and of the Tukano People, in the region of the High and Low Negro River, in the state of Amazonas.

In addition to investigation of these reports by the Judiciary Branch, the Brazilian government is also considering the development of a "code of conduct" to regulate the presence of the armed forces in indigenous lands, particularly with regard to the sexual and reproductive rights of indigenous women. As a matter of fact, this initiative is among the commitments made by the Brazilian government during the World Conference on Racism.

Unfortunately, there have been reports of AIDS cases in the communities. A first case, for example, has been recently detected among the Xikrin people, whose lands are traditionally located in the northern state of Pará. As a result of these reports, the government has intensified campaigns on the prevention and dissemination of information about the disease, such as the one that was carried out among the Icuna Indians, in the state of Amazonas.

*Article 3*

***States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.***

**Legislative Measures**

With regard to equity between m en and women, Brazil has introduced significant changes in its legislation since the 1930s, from the universal suffrage of 1934 and the recognition of women's full legal capacity in the 1960s.

The first feminist groups began to be organized early in the 1970s and 1975, which was proclaimed as the International Year of Women by the United Nations, underscored the emergence, in the political scene, of new feminist demands.

But it was only as of 1980 that governmental policies to support and increase women's social and political inclusion began to be discussed, based on the proposals of women's movements, particularly through Councils of Women's Rights. Nevertheless, formal equity was only explicitly referred to as "men and women have equal rights and duties under the terms of the law" in article 5, paragraph I of the 1988 Constitution. Until then, the law dealt only generically with the principle of equality: "all are equal under the terms of the law".

It was also the 1988 Constitution that introduced a new paradigm into the Brazilian Legal Democratic State, by defining diversity as a constitutional value, based on the "promotion of the well-being of all, without prejudice as to origin, race, sex, color, age and other forms of discrimination" (art. 3, par. IV) and as a fundamental objective of the Federative Republic of Brazil. Besides defining diversity as a value, the new Constitution ensures substantial equality, i.e., the equality that provides for differentiated treatment when the situation so requires, as well as the idea of distributive – in addition to retributive – justice. Paragraphs I and III of article 3 explicitly define as fundamental objectives: "I – to build a free, just, and solidarity-based society", and "III – to eradicate poverty and substandard living conditions and to reduce social and regional inequalities". Still among the fundamental principles of the Brazilian Legal Democratic State are – according to paragraphs II and III, article 1, of the Federal Constitution of 1988 – citizenship and the dignity of the human person.

In the 1990s, as a direct result of the need to promote substantial equity, Law 9,100/95 established a policy according to which political parties should have a minimum number of female candidates.

In 1995, Law 9,099/95 established the Special Criminal Courts with the aim of facilitating access to justice in cases of crimes of "lower offensive potential", which are punished by imprisonment of up to one year. The objective of the law is to accelerate the judicial proceeding by simplifying the acts. Nevertheless, in the case of violence against women, the women's movement believes that, although it prevents the limitation of a high number of lawsuits filed in police stations that are not submitted to the Judicial Branch, the law contributes to the carelessness regarding violence against women, since it conceptually reduces its importance and gravity and deals with such crimes in a simplified manner.

Law 9,263/96 was partially approved in 1996; it regulates paragraph 7 of article 226 of the 1988 Constitution that defines family planning as a right.

Also in 1996, the Senate Committee on Economic Affairs approved the plenary amendments submitted by Senator Benedita da Silva to Complementary Law nº 41/91, which regulated domestic employment. Among the new rights to be ensured to the class are unemployment benefits, the Employee's Dismissal Fund, and Free Transportation.

Two important laws on the combat of violence against women were approved in 1997. Law 9,455/97, which defines the crimes of torture and increases the punishment when the torture is inflicted on pregnant women, and Law 9,520/97, which provides for the right of women to file complaints and revokes the provision of the Code of Criminal Procedure that conditioned the right of a married woman to file a complaint to her husband's authorization, except when the complaint was against the husband himself or the woman was separated from him.

Law nº 10,445 of 13 May 2002 amended the sole paragraph of article 69 of Law 9,099/95, by establishing that, in cases of domestic violence, the aggressor may be ordered to leave the house, as a preventive measure.

Finally, with regard to civil laws, the women's movement believes that there have been significant constitutional advances in relation to the promotion of gender equality, as well as infra-constitutional advances with the issuing of the New Civil Code. This new Code will come into force on 11 January 2003 and introduces substantial changes such as the establishment of absolute equity between spouses through substitution of the term "paternal power" for "family power" and the use of "human being" in lieu of the generic word "men". Therefore, as of the above-mentioned date, all discriminatory provisions contained in the Civil Code still in force will be expressly revoked.

**Judicial Measures**

In view of the prevailing juridical thought, the existing national and international human rights rules are not enough to ensure consolidation of equity between men and women. It is important to understand how the Judicial Branch, which represents a fundamental body to modern democracies, has perceived equity.

The relevance of a final decision lies in its double degree of legitimacy, either in relation to the provision it is going to apply or in relation to the law it creates within the fact under analysis. Therefore, by "explaining" the laws, the judiciary builds social relations.

A survey on jurisprudence[44] was carried out within the Court of Appeals of the State of Rio Grande do Sul and Superior Courts, with a view to identifying the application of the principle of equity. The sentences surveyed show that the lawsuits relate only to issues of formal equality. This might mean that: a) on the one hand, the judiciary has not incorporated substantive equity into its sentences, and/or b) on the other, that substantive equality is not yet a perceived value (a juridical asset) and, as such, the object of lawsuits aimed at guaranteeing and protecting it – both on the part of the community and of State agents.[45]

In addition, the Judicial Branch still acts so as to perpetuate the idea that acts of violence against women are commonplace, thereby preventing the laws against them from being appropriately enforced.

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[44] Survey carried out by Themis – Legal Advisory and Gender Studies to analyze the "concept" of equity as applied in the courts. The survey included decisions issued between 1998 and 2000.

[45] Using entries such as "equity", "principle of equality" and "isonomy" the survey found 150 decisions and selected 27 court abstracts on "legal equality" that evinced the thought of the judiciary. The other decisions were on procedural issues. The abstracts, in general, discussed formal equity and sought to: a) guarantee provisional alimony to male spouses; b) extend social security benefits to men; and c) declare the unconstitutionality of the presumed dependence of women, as well as of its special venue. Nevertheless, none of the decisions surveyed discussed substantial equity or unequal and discriminatory situations. No definition of "equality" was found either. As a result, a new survey was performed using the following entries: "discrimination", "discrimination between sexes", "discrimination between men and women", "sexual discrimination", "equity", "equity between sexes", "isonomy between sexes", "isonomy between men and women", and "women's dignity". The survey found no decision on "discrimination between men and women", "sexual" and "equity". The 15 selected abstracts were on: a) equal requirements in public entrance exams; b) inclusion of the husband as a dependant for social security purposes; c) tax foreclosure attached by women; d) the woman's obligation to pay alimony; e) the husband's non-obligation to pay alimony; and f) the extension to convicts of the benefits defined in article 17, III, of the Law on Penal Performance, which establishes that convicts that benefit from the semi-open regime will only be allowed to stay in a private residence if they are female convicts with children who are underage or physically or mentally disabled.

In June 1999, the Federal Supreme Court (STF) decided that, for rape to be considered as a hideous crime, it should necessarily result in aggravated battery or death. The decision gained followers, who favored the enforcement of the more beneficial jurisprudence. Today, in the Court of Appeals of the State of Rio Grande do Sul and in other states, sexual crimes involving violent indecent assault and rape are being classified as aggravated crime (when it results in death or assault) and simple crimes (when it involves "just" sexual violence). This interpretation enables the flexibilization of punishment for people convicted for such crimes, when they involve "just" sexual violence and do not result in aggravated battery or death.

By classifying only aggravated rape as a hideous crime, the STF removes the hideous character off the group of rape-related crimes, in which sexual violence is included, and applies it only to assault and death. The problem is that, instead of questioning the unconstitutionality of imprisonment for all the crimes listed in the law on hideous crimes, which violate the principles of individuatization of punishment and equality of all under the terms of the law, the STF did it only with regard to cases of sexual violence, in which the victims, not by chance and in their great majority, are women.

Nevertheless, this position of the Federal Supreme Court was changed by a majority of votes during the judgment of Habeas Corpus nº 81.288, when simple rape also became a hideous crime.

The new decision was rendered during judgment of an Habeas Corpus case in behalf of a father who had been convicted for having sexual intercourse with his underage daughters. The request by the defense for a penalty reduction was denied by the Supreme Court. In a long explanation of her vote, associate justice Ellen Gracie Northfleet presented several studies to prove that "the psychological damages resulting from rape were more harmful and long-lasting than physical damages". She added that the courts should make a "systemic interpretation" of the law on Hideous Crimes and compared rape to the other crimes listed in the law: theft, blackmail aggravated by death, kidnapping for ransom, epidemic resulting in death, poisoning of drinking water or of food or medicinal substances aggravated by death, and genocide.

Finally, it is worth mentioning that associate justice Nelson Jobim (the rapporteur of the sentence on Habeas Corpus nº 80.479, who had adopted the previous interpretation of the Federal Supreme Court on the matter), changed his position. He stated that he had made an isolated interpretation of the law and that he had failed to construe correctly the meaning of the conjunction "and".

**Governmental Actions**

The Councils of Women's Rigths were established – at municipal, state and federal level – as a result of the mobilization of the women's movement. These Councils, which count on representatives of women's groups and movements, are charged with submitting proposals for and inspecting public policies aimed at women. The first state-level councils were established following the 1982 gubernatorial elections in São Paulo and Minas Gerais. Today, virtually all the states of the Federation have a Council of Women's Rights.

During the 1985 presidential elections, the women's movement submitted a proposal for the creation of the National Council of Women's Rights (CNDM). The Council was then established by Law 7,353 of 1985, for the purpose of promoting, at national level, policies to eliminate discrimination against women, ensure them conditions of freedom and equality of rights, as well as guaranteeing their full participation in the country's political, economic, and cultural activities.

The first administration of the CNDM, in the 1985-1989 period, was marked by the presence of women in the constitutional process which, following the 1986 general parliamentary elections, launched the process to develop a new national Constitution. With CNDM support, the women's movement organized itself throughout the country and wrote, in state-level plenary sessions, a Letter from Brazilian Women to the members of the constitutional convention, which contained a set of legislative proposals to combat discrimination against women.

During the constitutional process, which culminated in the promulgation of the Federal Constitution on 5 October 1988, CNDM coordinated the dialogue between the women's movement and Congress members, through hearings, protests, etc. It is believed that some 80 percent of the proposals submitted by the women have been incorporated into the Constitutional Charter.

Throughout that period, CNDM also participated in campaigns intended to clarify issues on women's rights and combat discrimination through newspapers, radio and TV stations, in addition to publications deriving from studies and research on women's condition in Brazil, such as the book entitled "Quando a Vítima é Mulher" ("When the Victim is a Woman"), which analyzes legal measures regarding violence against women.

In the administration started in February 1995, CNDM followed the entire process of organization of the IV World Women's Conference, as well as the implementation and continuity of the actions set forth during the Conferences on Human Rights in 1993, and on Population and Development in 1994. As a result, a document entitled "Strategies of Equality" was developed and delivered to the President of the Republic in March 1997, bringing to the scope of national policies and programs, those commitments made by Brazil to the international community. Among the actions that were implemented are the Cooperation Protocols signed by CNDM and the Ministry of Justice with the Ministry of Labor, aimed at promoting equity between men and women in the workplace, especially through professional qualification programs; with the Ministry of Education Ministry, to fight discrimination in the access to education and in the contents of textbooks; with the Ministry of Health, to implement actions regarding family planning and the prevention, diagnosis and prompt treatment of uterus and breast cancer; and with the Ministry of Administration and State Reform, to encourage the creation of institutional mechanisms, at federal level, intended for the promotion of equity.

Starting in July 2000, CNDM began to rely on a minimum infrastructure (an Executive Secretariat), which is directly linked to the State Secretariat for Human Rights in the Ministry of Justice. Nevertheless, in order to disseminate and implement actions that can actually bring to the daily lives of women the rights accorded them by law, as well as to fulfill the international commitments made by the Brazilian government, Provisional Measure nº 37 of 8 May 2002 provided for the creation, within the Ministry of Justice, of a State Secretariat for Women's Rights, which acts more effectively within other Federal Government agencies by proposing and monitoring public and governmental policies that promote gender equity.

Also worth mentioning is the experience of two state-level Councils – in Rio de Janeiro and São Paulo – which developed a "state-level Convention against Discrimination", which, based on the example of the United Nations' system, proposed that City Halls joined the state-level Convention in the fight against discrimination. Although focused on some Brazilian states, these experiences are reflected in the promotion of women's rights.

In 1998, the Executive Branch submitted two important proposals, which had an impact on the promotion of women's rights:

1. Constitutional Amendment nº 20/98, which provides for the General Social Security System and, among other rights, changes the conditions for retirement. The Amendment establishes that in order to retire, a person must have contributed to the Social Security System for 35 years, in the case of men, and 30 years, in the case of women, and be at least 60 and 55 years old, respectively, therefore gradually eliminating the criterion of service length. These changes tend to have an impact on the case of rural women, who, before the Amendment, could retire at age 55, provided they proved that they had contributed to the Social Security System for a minimum period, which ranged from 12 to 180 months.

2. Another important and positive measure was the issuing of Law 9,713/98, which unified the male and female staffs of the military police countrywide, thereby leveling the possibilities for promotion.

As a result of Protocols signed by the Ministry of Justice /State Secretariat for Human Rights and CNDM with several governmental agencies the following stand out:

- Support for primary and pre-school education in municipalities given priority by the Ministry of Education to receive food supplementation, through the distribution of basic foodstuff and school meal;
- Inclusion, among the selection priorities for special undertakings and housing financing, by the appropriate agents, of assistance to women who are heads of household;
- Out of the 190,000 loans granted by the Letter of Credit Program of the Ministry of Labor between January 1996 and February 1998, some 65,000 – i.e., one-third of the overall number – were earmarked for women;
- The Ministry of Labor created the Employment and Income Generation Program (PROGER), under a gender perspective. In the informal and newly-established segment, out of the financial operations contracted with Banco do Brasil, Banco do Nordeste and the Federal Government Savings Bank in 1999, 46.4 percent were submitted by women and resulted in the generation of 48 percent of new jobs ( PROGER/MTE data);
- The priority assigned to public policies on professional training and qualification for access to employment and income by women in situation of social disadvantage and young people at risk was established as a guideline for the National Plan for Workers' Development (PLANFOR). In March 1996, PLANFOR launched actions jointly with Secretariats for Labor and Women's Councils at all levels, for the development of projects for expansion and adjustment of the education offered to workingwomen. There has been an increase in the participation of women in PLANFOR – from 41 percent in 1996 to 49 percent in 1999, i.e., 8.3 million out of the people trained between 1995 and 1999, 48 percent were women. This figure, which corresponds to about 4 million women, exceeded the level of women's participation in the PEA;
- A partnership between the Ministry of Labor and Employment and the Ministry of Justice established the Program to Combat Discrimination in the Workplace and the Profession, for the purpose of implementing a policy that promotes equal opportunities and treatment in the labor market, as provided for in ILO Conventions nº 100, 111 and 159, which have bee ratified by Brazil;
- Actions have been developed in partnership with the Secretariat for Social Welfare /Ministry of Social Security and Social Welfare (MPAS/SEAS), in order to ensure the implementation of social welfare programs targeted at women and families, such as the Program to Eradicate Child Labor in urban and rural zones, and the Centers of Support for Families. Benefits such as scholarships, minimum income, socio-educational labor, and income generation are aimed primarily at women who are heads of households;
- Education programs aimed at women are being implemented with the Ministry of Labor and Employment and the Roberto Marinho Foundation/Futura TV Channel, with the intent of providing access to professional qualification and to the labor market, especially to women at risk or in social disadvantage, as well as adolescents and young people;
- Training courses are being offered, in partnership with the Ministry of Agrarian Development/National Institute of Colonization and Agrarian Reform (MDA/INCRA), to experts from that government agency in themes such as gender, and family agriculture, within the training program for social entrepreneurs.

Another initiative of the Executive Branch achieved by the women's movement was the establishment, since 1985, of police departments to deal specifically with women-related issues (DEAM). The objective of these police departments is to ensure special treatment as well as a more sensitive and cozy environment for women subjected to domestic violence. Nevertheless, the results of this public policy are quite insufficient, not only with regard to the quantitative aspect, but also from the standpoint of quality of the assistance it provides. It has been proven that the biological sex of the female police officers who work at the DEAMs is not a guarantee of sensitivity and ability to deal with the victims. These remarks are confirmed by the report presented by the United Nations Special Rapporteur on Violence Against Women in Brazil, submitted by the Economic and Social Council (ECOSOC) to the UN Human Rights Committee on 1st July 1997.

**Factors and Difficulties**

Although there have been many positive experiences involving society participation and State policies to be reported, there still is a long way to go towards the development and promotion of the rights of Brazilian women.

According to the 1999 UN Report on Human Development, consolidation of human rights and individual liberties is influenced by and conditioned to the social conditions. Based on preliminary data from the Brazilian Institute of Geography and Statistics (IBGE), women account for over 50 percent of the Brazilian population.[46] This means that poverty lies heavier on women. Considering, in addition, the social class/race ratio, it is important to notice that poverty is concentrated on black or Afro-descending women.

The UN report indicates that 26 million Brazilians live on the margin of human development, without minimum standards of health, education and basic sanitation or services. Furthermore, Brazil displays very high levels of wealth concentration (while the richest 20 percent accumulate goods and capital, 18 percent of the population lives in absolute poverty – a 32-time difference between the two opposing extremes.

But the above data are neither absolute nor homogeneous. In 1999, Brazil was classified as a country with an average human development index and ranked 79th among 144 countries. Nevertheless, according to the HDI, in the case of Afro-descendents in Brazil, when human development indicators are disaggregated on the basis of sex and race, the impact of gender and race discrimination becomes evident, causing HDI related to the black population in Brazil to drop to the 108th position, according to a survey carried out by the Federation of Associations of Social Welfare and Education Agencies (FASE) in June 2000. When only the white population is taken into account, the index rises to the 49th position, which is the standard of a rich country.

According to the HDI, life expectancy, disaggregated by sex and race, is as follows: 69 years for white men; 71 years for white women; 62 years for black men; and 66 years for black women. The average life expectancy for the overall white population is 70 years whereas for the overall black population it drops to 66.8 years. As for mortality rates among women, according to data from DATA SUS/MS, there was a 7 percent increase, with a variation between 4.8 percent and 5.1 percent per each thousand from 1980 to 1990. The same occurred with mortality rates among men, which jumped from 6.9 to 7.7 per each thousand, representing an 11 percent increase. In the same period, the overall population rates displayed a 9 percent increase, having raised from 5.8 to 6.4 per each thousand. Among principal external causes are homicides, which have increased by 34 percent in the country; however, since 1980 death by traffic accident has stood out as the major external cause of death.

The analyzes of causes of death[47] based on the age of Brazilian women, it is important to notice the increase in the relative weight that has occurred with regard to the so-called "external causes": they represented the first large group between 10 and 29 years of age in the 1980s. In the 1980-1994 period, it held the same position in age group 30 to 34 years, having emerged as one the five main causes in age group up to 55 years between 1980 and 1994.

Another of the so-called external causes in maternal mortality. In 1980, pregnancy complications, i.e., from child birth to the 42nd day of puerperium, were regarded as one of the five major causes of death among women in age group 15 to 34 years. In 1994, it was restricted to age group 20 to 24 years. This fact leads to the assumption that there was an improvement in health care for women at reproductive age, after implementation of the Single Health System (SUS), as well as of programs specifically focused on birth control, pre-natal care, child birth and puerperium. According to data published by the Ministry of Health, in 1980 the ratio of maternal mortality to live births stood at 69:100,000. In 1985, it fell to 51:100,000, having reached 45:100,000 in 1991. Since 1994, it has remained stable, at

[46] According to the 2000 census, there are 96.6 men per each 100 women. This means that in Brazil, the female population exceeds the male population by 2.7 million. In 1991, there were 97.5 men per each 100 women. The region with the lowest ration of men is the Southeast, with 95.8 men per each 100 women. The Northern region is the only one where the male population exceeds the female population: 102.4 men to 100 women.

[47] The data on woman mortality rates have been taken from the book "Female Morbidity-mortality in Brazil (1979-1995), organized by Elza Berquó and Estela Maria da Cunha. Campinas, 2000.

50:100,000. Specific figures on death by abortion, which are treated separately from direct obstetric causes, place abortion as the second major cause of death among women. Nevertheless, there was a 16 percent downward trend between 1980 and 1994. It is worth emphasizing the prevalence of heart diseases, which increased significantly in Brazil between 1980 and 1987, as well as high blood pressure, which also displayed a meaningful increase between 1980 and 1994. Breast cancer was and still is the major cause of death among women in age group 40 years and older, and ranks first among malignant tumors, in order of importance. This disease increased its relative participation in the country by 12 percent. The relative weight of uterus cancer decreased by 11 percent countrywide, in all regions, with variations ranging from 10 percent (Southeast) to 31 percent (Central-West). An 8 percent increase in this type of tumor has been recorded in the Southern region. Numbers of death by AIDS are still very high. Nevertheless, official figures indicate a decrease in the number of deaths by AIDS: 7,905 cases in 1998, 6,763 in 1999, and 5,189 in 2000. Preliminary data collected by 30 June 2001 indicate that the number of deaths by AIDS had dropped to 1,043 in 2001.

This is due, in addition to the several AIDS programs, to the issue of patents on medication for HIV/AIDS patients. This has led to the victory of a Brazilian proposal that ensures WHO member countries the breach of patents and the production of generic drugs for the protection of public health. This topic will be discussed further along in the analysis in the section on women's health; the policy to face up to the HIV/AIDS issue will be better explained there.

Data on income indicate that the per capita GDP among black women corresponds to 0.76 percent of the minimum wage. Among black men, this figure rises to 1.36 percent of the minimum wage. Among white women and men, the increase is even sharper: 1.88 percent and 4.74 percent of the minimum wage, respectively. Schooling rates are 82 percent among white men; 83 percent among white women; 76 percent among black women; and 70 percent among black men.

Brazilian women account for 40.4 percent of the economically active population. In the Federal Public Administration, this percentage stands at 43.8 percent, according to 1997 official data from the Brazilian Institute of Geography and Statistics (IBGE). Studies on women participation in the labor market have pointed to an impressive increase in the number of women among the Economically Active Population (EAP): from 20% in 1970 to 43% in 1997 – an average increase of 12% a year. Nevertheless, occupational segregation and lower salaries in relation to the male population are obstacles that still remain to be overcome. Housework is still the main source of employment among women; it comprises, according to estimates for 2000, 19% of the female EAP – something around five million women, out of which 56% are black.[48] In summary: women make up the majority in underemployment figures and in the informal sector of the economy, especially in the category of domestic servants.

In the formal sector, women, in general, earn less than men in the same type of job. Access to training is also more difficult for women. Although they are chosen over men to perform home-based activities, this preference cannot be considered as beneficial, since they have no protection against automation-related diseases.

Despite the increase in the number of women who are heads of households, this fact does not favor women as such. On the contrary, it is one of the factors that contribute to acknowledgement of the so-called *"womanization of poverty"*, especially in view of the omission of men, with regard to paternal responsibilities. The separation of the couple generally means, to men, cessation of any obligation towards their children.

In addition, still with regard to conjugal relations, it is important to emphasize UN data on the 1999 HDI, which show that Brazil fails to increase its GDP by 10% as a result of violence against women.

[48] Public Policies for Women in Brazil: A Nationwide Assessment five years after Beijing. Articulation of Brazilian Women - Brasilia: AMB, 2000. Pages 25 –26.

According to the data presented on economic and social inequalities, access to equity is very much marked by the cross-sectioning among class, ethnicity, age, education and, finally, the differences that exist among women themselves. The vulnerability of women to the violation of human rights affects especially the poorest segments, and creates different obstacles that must be overcome for the fulfillment of CEDAW's proposals.

It is necessary, therefore, to adopt measures that can change laws, rulings, or existing practices that maintain the patterns of discrimination against women. The general behavior of the population and many institutional policies largely reiterate the prejudice that prevails at the structural level of Brazilian society.

*Article 4*

***1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.***

***2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.***

**Legistative Measures**

*Federal Constitution*

The Constitution of the Federative Republic of Brazil in its Article 3, paragraph IV, defines as one of its fundamental objectives "the promotion of the well-being of all, without prejudice as to origin, race, sex, color, age and other form of discrimination".

Article 5 states that "all persons are equal before the law, without any distinction whatsoever, Brazilians and foreigners residing in the country being ensured of inviolability of the right to life, to liberty, to equality, to security and to property". It explains in its paragraphs that: I – Men and women have equal rights and duties under the terms of this Constitution; XLI – The law shall punish any discrimination which may attempt against fundamental rights and liberties; XLII – The practice of racism is a non-bailable crime, with no limitation, subject to the penalty of confinement, under the terms of the law. Paragraph 2 of the same article establishes that the rights and guarantees expressed in the Constitution do not exclude others deriving from the regime and the principles adopted by it, or from the international treaties in which the Federative Republic of Brazil is a party.

Article 6, among the social rights (education, health, work, housing, leisure, security, social security and assistance to the destitute) also includes the protection of maternity and childhood.

Among the rights of urban and rural workers as provided for in article 7 are: I – Employment protected against arbitrary dismissal or against dismissal without just cause, in accordance with a supplementary law which shall establish severance-pay, among other rights; XVIII – Maternity-leave without loss of job and salary, for a period of one hundred and twenty days; XIX – Paternity leave, under the terms established by law; XX – Protection of the labor market for women through specific incentives, as provided by law; XXV – Free assistance for children and dependents from birth to six years of age, in day-care centers and pre-school facilities; XXX – Prohibition of any difference in wages, in the performance of duties and in hiring criteria by reason of sex, age, color or marital status; XXXI – Prohibition of any discrimination with regard to the wages of physically disabled persons and the criteria for their admittance.

Article 37 – which defines the principles governing the direct and indirect public administration of any of the Powers of the Union, as well as their foundations – states that these bodies shall obey the principles of lawfulness, impersonality, morality, publicity and also the following: VIII – The law shall reserve a percentage of public offices and positions for physically disabled persons and shall define the criteria for their admittance.

Upon defining the criteria for retirement, article 40 ensures civil servants the right to voluntarily go into retirement: a) upon thirty-five years of service, if a man, and upon thirty years, if a woman, with full pay; b) upon thirty years of effective exercise in teaching positions, if a man, and upon twenty-five years, if a woman, with full pay; c) upon thirty years of service, if a man, and upon twenty-five years, if a woman, with pay in proportion to this period; and d) at sixty-five years of age, if a man, and at sixty, if a woman, with pay in proportion to the period of service.

Article 201 establishes that social security plans, upon contribution, shall provide for, in accordance with the law: I – Protection of the family, maternity, childhood, adolescence and old age; III – Protection of maternity, especially of pregnant women.

Article 202 establishes that the retirement benefit shall be calculated in compliance with the following conditions: I – At sixty-five years of age for men and sixty years for women, this age limit being reduced in five years for rural workers of both sexes and for those who exercise their activities within a family production system, therein included rural producers, the *placer* ('garimpo') miner and the self-employed fisherman; II) After thirty-five years of work for men, and after thirty years for women, or after a shorter period, if subject to work under special conditions, which may be harmful to health or physical integrity, as defined by law; III – After thirty years for male teachers and after twenty-five years for female teachers, for actual exercise of the teaching function. Paragraph 1 ensures proportional retirement upon thirty years for men and upon twenty-five years for women.

Article 203 establishes that social assistance shall be rendered to whomever may need it, regardless of contribution to Social Welfare and shall have as objectives: III – The promotion of integration into the labor market; IV – The habilitation and rehabilitation of the physically disabled and their integration into the community; V – The guarantee of a monthly benefit of one minimum wage to the physically disabled and to the elderly who prove their incapability of providing for their own support or having it provided for by their families, as set forth by law.

Article 208 establishes that "The duty of the State towards education shall be fulfilled by ensuring the following: III – Specialized schooling for the physically disabled, preferably within the regular school system; IV – Assistance to children of zero to six years of age, in day-care centers and pre-schools".

Article 215 determines that the State shall ensure to all the full exercise of cultural rights and access to the sources of national culture, and shall support and foster the appreciation and diffusion of cultural expressions. Paragraph 1 adds that the State shall protect the expressions of popular, Indigenous and Afro-Brazilian cultures, as well as those of other groups that participate in the national civilization process.

Article 10 of the Temporary Constitutional Provisions Act, establishes that, until the supplementary law referred to in article 7, I of the Constitution is enforced: II – Arbitrary dismissal without just cause is prohibited: b) in the case of a pregnant employee, from the date that pregnancy is confirmed to five months after childbirth as well. Paragraph 1 establishes that, until such time as the law shall regulate the provisions of article 7, XIX of the Constitution, the period of paternity leave referred to in that item is of five days.

In view of the above-mentioned, it may be inferred that, in relation to the previous Constitutions, the 1988 Constitution of the Federative Republic of Brazil is quite advanced, since it acknowledges substantive rights. On the one hand, it ensures democratic processes and relations and, on the other, it embraces situations and social segments that are in a position of vulnerability, whether structure- or juncture-wise.

It is important to notice that the Federal Constitution of 1988 contains more provisions prohibiting discrimination than specific affirmative action provisions. Nevertheless, they were all mentioned insofar as rules, by prohibiting discrimination, end up by indirectly promoting equality.

The discussion about affirmative actions is rather recent in Brazil. It is a debate that has not yet been completely absorbed by the Science of Law, which still formulates its thoughts on equality on the basis of non-discrimination.[49]

The Federal Constitution of 1988 dedicates two provisions to concrete rules on affirmative actions: one on women and one on physically disabled persons.

[49] For information on affirmative actions, see Mônica de Melo op. cit.

With regard to women, the Charter establishes, within the group of social rights, the following affirmative action rule:

*Art. 7 The following are rights of urban and rural workers, among others that aim to improve their social conditions:*

*XX – protection of the labor market for women through specific incentives, as provided by law.*

It may be noticed that the discussion about affirmative actions in Brazil also relates to the labor market, where astonishing discriminations against women still persist,[50] with regard to admittance, to different wages for the same type of job, or to the right to hold managerial positions, among others.

Law 9,799/99 was issued in order to regulate paragraph XX of article 7 of the 1988 Constitution. Although it included rules on the access of women to the labor market in the Labor Code, the law basically provides for the general possibility of adopting affirmative actions to promote women's labor market. The National Congress is examining bills that provide for the adoption of specific affirmative action measures intended to promote the participation of women in the labor market. Bill nº 2.417/89[51] provides for the granting of tax incentives to legal entities, in order to encourage the hiring of female labor and investment in their qualification. According to this bill, legal entities with more than 50 employees may deduct from their operational profits, for Income Tax purposes, up to 30 percent (thirty percent) of the overall amount paid out as salaries, in the base year, to female employees, whenever they can prove that at least 50 percent (fifty percent) of the deducted amount has been invested in the training and qualification of female labor.

The bill, therefore, defines a clear mechanism of affirmative action, to the extent that it grants a benefit to those companies that hire more women: although it does not oblige, only encourages the adoption of affirmative action, as provided for in the Constitution, in the sense that the law shall provide for incentives for protection of the female labor market. At the same time, it shows concern for the education, qualification and training of female labor, by determining that part of the amount deductible from Income tax is to be earmarked for that purpose.

Also under examination in the National Congress is Bill nº 382/91, which provides for the access of women to the labor market by ensuring equal opportunities between genders and prohibiting discrimination by reason of sex, age, color, family situation and pregnancy, as well as the bodily searching of female domestic or civil servants, and grants fixed benefits to those companies that encourage female labor, in accordance with article 7, paragraph XX of the Federal Constitution.

Another mechanism of affirmative action which, although not covered by an explicit constitutional rule accepts the provisions of CEDAW and has produced concrete results was the establishment of quotas for women candidates in the proportional election system, according to Law 9,504/97.

Justification of the Bill that led to the approval of affirmative action measures for women in politics, referred expressly to the international instruments ratified by Brazil, by emphasizing that "establishing mechanisms for the equal participation of women, as well as for their equitable representation at all levels of the political process and of public life in each community and society… " is one of the recommendations in the Action Plan of the World Conference on Population and Development (Cairo/94). This recommendation also reiterates commitments made by the countries upon ratification of the Convention on the Elimination of All Forms of Discrimination Against Women, as well as of other conferences on social themes in the 1990s. The Brazilian Constitution emphasizes the promotion of equity between men and women. Nevertheless, this legal equality has not yet been consolidated in all segments of society. According to the UN, should the current 1 or 2 percent growth rate of women in managerial positions prevail, it will take us another 400 years before the world can have equal gender representation.

[50] As may be seen in several sections of this report, but especially in the comments about article 11.
[51] Bill submitted by Federal Deputy Rita Camata.

Finally, special mention should be made to another mechanism of affirmative action, also provided for in the Federal Constitution of 1988, which establishes that a percentage of governmental offices and jobs are to be set aside for physically disabled persons. Although not directly aimed at women, this mechanism certainly benefits them as well.

At federal level, Law 8,112/90, which establishes the legal regime for Central Government servants, government agencies and federal public foundations, regulated article 37, VII of the Federal Constitution of 1988 by establishing that:

*"Art. 5 The following are basic requirements for investiture in public office:*

*I – to be a Brazilian-born citizen;*

*II – to be in full enjoyment of one's political rights;*

*III – to be even with military and electoral duties;*

*IV – to have the education level required for the office;*

*V – to be at least 18 years old;*

*VI – to be physically and mentally capable;*

*§ 1- Responsibilities of the office may justify other requirements as defined by law.*

*§ 2 - Physically disabled persons are ensured the right to register for public entrance examinations for the provisioning of offices the responsibilities of which are compatible with their disability; up to 20 percent (twenty percent) of the places offered in the entrance examination shall be set aside to such persons.*

Therefore, the public call notice for any public entrance examination aimed at hiring federal public servants should provide for offices/positions to physically disabled persons. It is worth noticing that the article mentions up to 20 percent of the offices/positions. This, in practice, besides determining that the tasks to be performed should be compatible with the person's disability, also means that the number of offices/positions could be lower.

Interpretation of the provision has led to controversies in jurisprudence. It is interesting to emphasize that the decision issued in RMS nº 3.113-6/DF 6ª T., j. 06/12/94, whose rapporteur was Chief Justice Pedro Acioli,[52] states, in the official abstract of the sentence that, *"Since article 37, VIII, of the Federal Constitution is a rule of limited efficacy, article 5, § 2 of the new Statute of Federal Public Servants has been issued to regulate the aforementioned constitutional provision, so as to give it full efficacy. One can easily see that the provision of the statutory law defines the contours of the constitutional provision by ensuring physically disabled persons the right to apply for public entrance examinations, establishing that the responsibilities pertaining to the office should be compatible with the disability and, finally, by defining a maximum percentage of public offices and positions for such persons. According to these parameters, the administrator is fully free to regulate the access of the physically disabled persons who pass the examination. The Federal Constitution also prohibits the administrator from rejecting physically disabled persons who pass the examination but fail to qualify for the office. Furthermore, this decisum rejects the argument that the constitutional rule has not been regulated by the statutory law, based on the fact that said law does not define sufficient criteria. The appeal is therefore granted, with the determination that the appellant be offered the office or position, according to the percentage that comes to be reserved for physically disabled persons, in compliance with qualification standards, if appropriate".*

Another sentence, the official abstract of which is worth mentioning, has also been issued by the Superior Court of Justice:

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52 - Sentence published in RT/716-286, June 1995.

ABSTRACT: Constitutional and administrative. Public Entrance Examination. General rule. Physically Disabled Persons. Number of offices/positions. Determining criteria. I - Passing the public entrance examination and general conditions for investiture in public office or position (Federal Constitution, article 37, II), including physically disabled persons, to whom the law should define conditions and criteria to ensure the regular performance of responsibilities pertaining to the office or position (Federal Constitution, article 37,VIII). II – in this case, the petitioner failed to prove that his disability would not interfere in the discharge of his responsibilities as a fiscal auditor. Denial of the appeal is hereby sustained. Origin: Superior Court of Justice (STJ), decision of the Fifth Panel: 09-04-1995; source: Official Gazette of the Judicial branch; date: 09-25-1995, page 31120. Rapporteuer: Chief Justice Jesus Costa Lima. The decision to deny the appeal was unanimous.

This sentence makes it clear that physically disabled persons must prove that their disability will not interfere in the discharge of their responsibilities as public servants, in accordance with the provisions of Law 8,112/90, which determines that such responsibilities should be compatible with the applicant's disability.

Law 8,213/91 establishes that the private sector shall reserve a percentage of positions for physically disabled persons, which varies between 2 percent and 5 percent, according to the overall number of company employees. This provision also ends up by benefiting physically disabled women, although the law is not directly aimed at them.

**Federal Legislation – Affirmative Actions**

The federal laws that contemplate affirmative actions aimed at women are:

**1) Law 7,353 of 29 August 1985** – Establishes the National Council on Women's Rights (CNDM), a collegiate body with decision-making powers, aimed at promoting, at national level, public policies to eliminate all forms of discrimination against women and to ensure them freedom and equal rights, in addition to their full participation in political, economic and socio-cultural activities in the country. CNDM and its Executive Secretariat are linked to the State Secretariat for Human Rights of the Ministry of Justice;

**2) Law 7,437 of 20 December 1985** – Includes, among criminal offenses, the performance of acts resulting from race, color, sex or civil status prejudice, and gives new wording to Law nº 1.389 of 3 July 1951 – the *Afonso Arinos* Law;

**3) Law 7,668 of 22 August 1988** – Authorizes the Executive to establish Fundação Cultural Palmares (Palmares Cultural Foundation), among other things;

**4) Law 7,716 of 5 January 1989** – Defines the crimes resulting from race or color prejudice;

**5) Law 8,081 of 21 September 1990** – Defines the crimes and punishments applicable to discriminatory practices or prejudices of race, color, religious belief, ethnicity or national origin conveyed by the media or in publications of any nature;

**6) Law 9,029 of 13 April 1995** – Forbids the requirement of proof of pregnancy and sterilization, as well as other discriminatory practices for the purpose of admission or permanence in the Legal Labor Relationship;

**7) Law 9,100 of 2 October 1995** – Defines rules for the municipal elections of 3 October 1996, among other things. § 3 of article 11 establishes that at least 20 percent of vacancies in each political party or coalition shall be reserved for women candidates;

**8) Law 9,504 of 30 September 1997** – Defines rules for election. Its general provisions determine that:

*General Provisions – Registration of candidates*

*Art. 10 - § 3 – Each political party or coalition shall reserve a minimum of thirty percent and a maximum of seventy percent of the overall number of seats resulting from the rules provide for in this article for candidates of each sex.*

*Art. 16. Up to forty-five days before Election Day, the Regional Electoral Courts shall send to the Superior Electoral Court the list of candidates to the majority or proportional elections, for the purpose of centralizing and disseminating data. The list shall compulsorily mention the sex and seat to which the candidates are running.*

*Transitory Provisions: Art. 80. In the elections to be held in 1998, each political party or coalition shall, if possible, reserve, for candidates of each sex, a minimum of twenty-five percent and a maximum of seventy-five percent of the overall number of seats;*

**9) Law 9,799 of 26 May 1999** – Includes in the Labor Code rules for the access of women to the labor market, among other things;

**10) Law 10,048 of 8November 2000** – Defines priority in assistance to specific groups, among other things (regulates articles 227 and 230 of the new Federal Constitution) by ensuring special treatment to the physically disabled, the elderly, pregnant women, breast-feeding women and persons carrying infants, in government offices and public service concessionaires, in public sites and buildings, as well as in public washrooms and transportation, by establishing penalties to be imposed on violators;

**11) Law 10,244 of 28 June 2001** – Revokes article 376 of the Labor Code (CLT), according to women the right to work over-time.

**Federal Legislation – Protection of Maternity**

Special mention should also be made to the federal laws specifically aimed at protecting motherhood:

**1) The Labor Code – Executive Law 5.452/43** – establishes, in its Chapter III on the protection of female labor, more precisely in section V, some provisions (articles 391 and 400) aimed at protecting maternity;

**2) Law 7,644 of 18 December 1987** –Regulates the activity of Social Mother, among other things;

**3) Law 8,212 of 24 July 1991** – Provides for the organization of Social Security and establishes the Costing Plan, among other things. It also ensures female Social Security beneficiaries the right to receive maternity-salary, among others;

**4) Law 8,861 of 25 March 1994** – Gives new wording to articles 387 and 392 of the Labor Code and amends articles 12 and 25 of Law 8,212 of 24 July 1991 and articles 39, 71, 73 and 106 of Law 8,213 of 24 July 1991, all concerning maternity-leave. It also ensures the right to maternity-leave to urban and rural workers, domestic servants and small rural producers, as well as to freelance workers. This law was passed following a broad mobilization of the respective working class. The regulation of maternity-leave has been restricted to social security;

**5) Law 8,978 of 9 January 1995** – Provides for the construction of day-care centers and pre-school facilities. Developments built with funding of the Housing Financial System shall contemplate, primarily, the construction of day-care centers and pre-schools;

**6) Law 9,029 of 13 April 1995** – Forbids the requirement of proof of pregnancy and sterilization, as well as other discriminatory practices, for the purpose of admission and continuation of the Legal Labor Relationship. The prohibition includes "requiring tests, exams, inspections, legal opinions, statements or any other procedure relating to sterilization or pregnancy, birth control, etc.," and defines punishments;

**7) Law 9,263 of 2 January 1996** – Regulates family planning and defines penalties, among other things. Among the basic actions to be ensured by the Single Health System are: assistance to conception, pre-natal and childbirth care, as well as to puerperium and the newborn baby;

**8) Law 9,318 of 6December 1996** – Amends item "h" of subparagraph II of article 61 of the Penal Code. This law includes among the circumstances that aggravate punishment, those crimes committed against pregnant women;

**9) Law 9,394 of 20 December 1996** – Establishes guidelines and bases for national education. Provides for Child Education in day-care centers or equivalent institutions for children up to three years of age and pre-school for children in age group four to six years;

**10) Law 9,601 of 21 January 1998** – Provides for employment contracts for a limited period. Establishes the temporary contract at a minimum period of three months, which may be extended for an additional period of two years.

Federal legislation enlarges basic constitutional rights by defining discriminatory practices committed against women and/or black persons, and establishes corresponding punishments. At the same time, the Public Powers-that-be have shown increasing sensitivity to these issues, by establishing forums in which to follow up the development of such issues within the Government's institutional and political framework.

Both the Constitution and the infra-constitutional legislation accept motherhood, recognize it as a role that deserves social protection, and regulates the rights of pregnant women. Nevertheless, one cannot neglect the prevalence of a limited perspective on maternity, which is based on biological reproduction, to the detriment of a broader perspective – one of social reproduction – that supports the social inclusion of children and adolescents. We are presently facing the possibility that some maternity rights might be jeopardized within the scope of labor and social security, in view of the increasing expectation of loss/restriction of rights resulting from the perverse effects of globalization.

**State Constitutions**

With regard to special measures to accelerate equity between men and women, state Constitutions have adopted some provisions from the Federal Constitution, as well as establishing new ones.

By defining the rights of public servants, twenty Constitutions,[53] in addition to the Organic Law of the Federal District, ratify the terms of articles 7 or 39 of the Federal Constitution on the protection of the female labor market through specific incentives.

As for the acceleration of equity between men and women, mention should be made to article 275 of the Constitution of the State of Ceará, which recognizes special actions aimed at women: *The State shall adopt measures aimed at ensuring the full development and progress of women, with the objective of guaranteeing them the enjoyment of human rights and fundamental freedoms, on equal bases with men.* The Constitution of the State of Mato Grosso also contains a provision in this regard.

In order to attain this objective, the State Constitutions of Ceará, Pará and Paraná, as well as the Organic Law of the Federal District, have established State Councils for Women's Rights. The responsibilities of these Councils are listed in article 219 of the Constitution of the State of Paraná: *The State Council of Female Condition is a governmental advisory body established by law, with the aim of promoting and ensuring women's rights by proposing studies, projects, programs and initiatives to eliminate all forms of discrimination against women, together with other governmental agencies.*

[53] Alagoas, Acre, Amapá, Amazonas, Bahia, Goiás, Mato Grosso, Maranhão, Minas Gerais, Pará, Paraná, Pernambuco, Piauí, Rio de Janeiro, Rio Grande do Norte, Rio Grande do Sul, Rondônia, Santa Catarina, São Paulo, Sergipe, and Tocantins.

Some State Constitutions, such as that of Pará, define special measures by determining that *it is the duty of the State: in compliance with the functions that are essential to justice, to establish a center for assistance, support and legal advice to women, with regard to their specific issues.*

The Constitution of the State of Ceará adopts a specific measure, in accordance with article 4 of CEDAW: implementation, within the organizational framework of the State Secretariat for Education, of the sector known as *Women and Education*, which aims at, together with the Council of Women's Rights of the State of Ceará, the adoption of adequate measures to ensure equal rights to women, such as *the reduction of dropout rates and the organization of programs to enable young women who have dropped out of school prematurely to go back to school; adoption of other measures aimed at reducing, as soon as possible, the knowledge gap between men and women in the State of Ceará.*

Furthermore, with the exception of the State of Roraima, all State Constitutions and the Constitution of the Federal District ensure their female public servants the right to retire at an age that is lower than men's. This measure will be necessary as long as the workload of women within their homes is heavier than that of men.

Maternity, which is provided for in article 4 subparagraph 2 of CEDAW, is regulated in State Constitutions in different chapters. Special mention should be made to the State Constitutions of Minas Gerais and Paraíba, which define assistance to maternity as a priority objective of the state. The States of Ceará, Rio Grande do Norte and Roraima, raise the status of maternity protection to the status of social right.

Most State Constitutions establish that social assistance or other types of assistance should protect maternity, and some expressly state that it is the State's duty to provide such protection.

The relevance assigned to the theme is also clear in the specific provisions on funds to be earmarked for maternity assistance in the States of Amapá, Espírito Santo, Maranhão, Rio Grande do Norte, Rio Grande do Sul, Rondônia, Sergipe and Tocantins.

In the field of health, responsibilities regarding maternity are differently provided for in State Constitutions. The state of Bahia ensures assistance to the right to pregnancy, childbirth and breastfeeding, as also do the states of Pernambuco, Rondônia, Tocantins and Amazonas. The Constitution of the state of Roraima refers only to breastfeeding and the Constitution of the state of Sergipe refers, in general terms, to maternity and childhood assistance. Finally, the Organic Law of the Federal District and the Constitutions of the states of Goiás, Rio de Janeiro, São Paulo and Tocantins refer to full assistance to women's health. As an example, the following is the provision of the State of Tocantins Constitution:

*Art. 152- Under the terms of the law, it is the duty of the Single Health System, among other things:*

*XIV- to provide full assistance to women's health, in all stages of their life, including pre-natal and post-childbirth care, prevention of breast and uterus cancer, through governmental programs to be developed, implemented and controlled by entities that represent women.*

It is worth mentioning that Constitutions of the states of Bahia, Pará, Pernambuco, Piauí, Rio de Janeiro, Sergipe and Tocantins ensure similar rights to adoptive mothers; the Constitution of Goiás also mentions paternity-leave; and the Constitution of Goiás mentions adopted parents.

Still with regard to pregnant public servants, the Constitution of the State of Bahia ensures the relocation to another position by medical recommendation, without loss in salary and other benefits offered by the office or position. Constitutions of the states of Amapá, São Paulo and the Federal District contain similar provisions.

The nursing period is emphasized in articles such as article 95, paragraph XII of the Constitution of the state of Goiás, which provides for a thirty-minute nursing period at every three uninterrupted working hours. The

Constitution of the State of Paraíba ensures the nursing mother the right to have her daily workload reduced by one-fourth.

With regard to female prisoners, most Constitutions establish that they shall be ensured the necessary conditions to remain with their children during the nursing period, in addition to other legal provisions contained in article 3 of CEDAW.

Finally, it is interesting to notice that Constitutions of the states of Rio de Janeiro, Espírito Santo and Amazonas provide for the easy access of pregnant women to both public and private areas.

Considering the aforementioned provisions, one concludes that state Constitutions assign considerable relevance to maternity protection, by establishing provisions that range from the right to locomotion to the implementation of day-care centers in prisons. They also deal with themes such as pre-natal care, breastfeeding, employment relations, health and social welfare.

Notwithstanding the relevance of such measures, implementation of constitutional provisions on maternity should be assessed together with other provisions of CEDAW and of legal state-level instruments. One should also consider the very concept of maternity as used in state laws, which as a rule prioritize the role of mother, of procreator, to the detriment of a full approach to women.

An example of this may be found in article 256 of the Constitution of the State of Maranhão, which emphasizes infant mortality but makes no mention to maternal mortality: *Public agencies shall invest a percentage of the public funds earmarked for health in maternity-childhood care, so as to ensure the necessary means and conditions to efficiently combat infant mortality.*

Fortunately, some significant progress has also been made, such as, for example, expansion of the concept of maternity – which overcomes the limitation of biological reproduction – by extending to adoptive mothers the rights granted to natural mothers.

Some legal instruments include concepts on maternity based on the recognition of women's autonomy, such as the Constitution of the State of Amazonas, which establishes, in its article 186 that: *Women shall be ensured free choice for maternity, which in this case shall be construed as pre-natal, childbirth, and post-childbirth care, the right to avoid, and in the cases provided for by law, the right to interrupt pregnancy without harm to their health.*

Also worth emphasizing is the existence of more advanced provisions, such as those in the Constitution of the State of Goiás, which refer to a concept of maternity based on gender equality, as well as on the autonomy of women. It expressly establishes that the *State and the Municipalities shall provide social and psychological assistance to those who need it, with the aim of promoting integration into the labor market, by recognizing maternity and paternity as relevant social roles and ensuring parents the means they may need to provide their children with education, assistance in day-care centers and pre-school facilities, health, food and security.*

One therefore concludes that state Constitutions, as a whole, assign high relevance to motherhood protection, in accordance with the provisions of article 4 – 2 of CEDAW. Nevertheless, they also evince the need for greater equity between men and women, in order to ensure the autonomy of women's decisions, and recognition of the social role played by maternity.

**State Legislation – Affirmative Actions**

There are also State laws that include affirmative actions aimed at women:

1) Federal District – **Law 49/99** – Establishes the Departments of Assistance to Women Victimized by Violence and Maltreatment in all Police Stations in the Federal District;

2) Federal District – **Law 2,310/99** – Establishes the Qualification Program for Civilian and Military Police Officers, which takes into account the specific issue of Violence against Women;

3) Federal District – **Law 2,701/01** – Creates, within the framework of Federal District Police Stations, the Service of Assistance to Women Victimized by Violence and Maltreatment;

4) Espírito Santo - **Law 5,601/98** - Creates the State Center for Support of Women;

5) Pernambuco – **Law 11,667/99** – Provides for inclusion of the gender perspective into social development programs at urban and rural level, in order to promote the active participation of women and optimize the inclusion of gender issues into social development programs;

6) Rio Grande do Sul – **Law 11,303/99** – Defines minimum and maximum quotas (30 percent and 70 percent) of men and women in office/positions in the state administration;

7) Rio Grande do Sul – **Law 11,574/01** – Provides for the investment of public funds earmarked for training, to the benefit of women and family supporters, among other things;

8) São Paulo – **Law 10,872/01** – Defines measures to ensure the equity to women and prohibits discrimination by reason of sex, among other things.

**State Legislation – Maternity Protection**

With regard to maternity, the following state laws also deserve to be mentioned:

1) Federal District – **Law 331/92** – Provides for the prohibition to require any type of test to diagnose pregnancy, as well proof of sterilization or tubal ligation, among other things;

2) Roraima – **Law 89/95** – Establishes the Supplementary Nutrition Program for Pregnant and Nursing Women, and Needy Children, among other things; and

3) Mato Grosso – **Law 6,819/96** – Provides for the construction of day-care centers and sanitary units in housing centers built by the State or by agreement.

It should be noticed that some state laws adopt and enlarge on rights provided for in the Federal legislation. By reaffirming rights, forums and processes intended to ensure women's rights and gender equality, these laws gain great relevance, since they enable the debate and the participation of local communities in Legislative Assemblies.

**Legal Measures**

A survey carried out from 1995 to 2000 indicates that the prohibition of racial discrimination is still largely ignored by the police and courts of justice in Brazil. The research performed by Christiano Jorge Santos,[54] a public prosecutor and professor at the Catholic University of São Paulo (PUC), shows that, during that period, 1.050 cases were officially reported in 22 Brazilian states. These reports resulted in 651 inquests, out of which only 394 led to judicial proceedings. No convictions were recorded.

In April 1999, the Brazilian Judicial Branch reaffirmed the rights of women by granting an injunction to the writ of prevention against an Administrative Ruling of the Ministry of Social Security issued late in 1998, which

[54] *Crimes de Preconceito e de Discriminação: Análise Jurídico-Penal da Lei n.º 7.716/89 e Aspectos Correlatos*, 1.ª edição, São Paulo: Ed. Max Limonad, 2001.

reduced the amount of maternity salary. The Administrative Ruling in question included the maternity salary into the benefits to be paid by Social Security, which back then stood at R$ 1,200.00, or the equivalent to ten minimum wages.

Several members of the National Congress reacted by submitting bills requesting suspension of the measure. At the same time, the Brazilian Socialist Party filed an unconstitutionality suit, which was accepted by the Supreme Court. By so doing, the Supreme Court reaffirmed the constitutional right to "maternity-leave without loss of job and salary, for a period of one hundred and twenty days", although that is not yet final. To this end, mobilization and the campaign implemented by women's movements and groups of women of certain professional categories, unions and affiliates of political parties were of fundamental importance.

**Governmental Actions**

The Ministry of Agrarian Development implemented a quota program that initially earmarks 30 percent of all funds for settled women, who worked in family agriculture. This allocation of funds comprises credit lines from the National Program for the Strengthening of Family Agriculture and from the Banco da Terra (Land Bank), as well as qualification and technical assistance. Women are therefore entitled to 30 percent of the R$ 4.2 billion (R$ 1.2 billion) offered by the Government to fund agrarian reform projects all year round. The Ministry of Labor and Employment (MTE), in turn, established the "Employment and Income Generation Program" (PROGER), with a gender perspective, in the informal sector. Out of the financial operations contracted with Banco do Brasil, Banco do Nordeste and the Federal Government Savings Bank in 1999, 46.4 percent were effected by women and resulted in the generation of 48 percent of new jobs. The Ministry also implemented the "National Workers Qualification Program" (PLANFOR), with actions coordinated within Secretariats for Labor and Women's Councils at all levels, for the purpose of developing projects to expand and adjust the offer of professional qualification to working women. MTE, in partnership with the Ministry of Justice, established a "Program to Combat Discrimination in Labor and Professions", with the aim of implementing policies to promote equal opportunities and treatment in the labor market, as provided for in Conventions nº 100, 111 and 159 of the International Labor Organization (ILO), which Brazil has ratified.

By foreseeing the integration of inter-ministerial actions to fight domestic and sexual violence, as well as considering the terms of cooperation and agreements on the matter, the Ministry of Justice established the "National Program to Prevent and Combat Domestic and Sexual Violence in the National Council for Women's Rights".

Within the Ministry of Health, some actions deserve special mention: the Programs for Full Assistance to the Health of Women, to Maternity and Childhood and Combat against Nutritional Deficiency. The new Multi-annual Plan (2000-2002) establishes, within the scope of the Women's Health Program, the purchase and distribution of medication and strategic inputs for family planning, educational campaigns, studies and research, as well as the definition of rules, procedures and guidelines relating to women's health, particularly pre-natal, high-risk pregnancy, childbirth and post-childbirth care, and the implementation of systems and services to provide more humane assistance to pregnancy and childbirth.

The following normative acts of the Executive Branch also deserve special mention:

a) Ministry of Agrarian Development – Administrative Ruling issued establishing that 20 percent of office/positions in the Ministry and in the National Institute of Colonization and Agrarian Reform are to be reserved for black and mulatto persons. The provision is also to be complied with by private companies that provide services to the Ministry. This percentage is expected to reach 30 percent of all offices/positions by 2003;

b) National Institute of Social Security (INSS) – Normative Instruction nº 25/2000 issued, defining, by force of sentence, procedures to be adopted for the granting of pension resulting from the death of homosexual partner;

c) Ministry of Labor and Employment – Executive Decree of 20 March 1996 creating a Workgroup for the Elimination of Job and Professional Discrimination (GTEDEO), with the mandate to develop and propose studies, programs and

strategies aimed at the promotion of equity among genders, races and all forms of practices that discriminate persons in the labor market. It is also worth mentioning the establishment of a Permanent Women's Workgroup (GPTM);

d) Ministry of Labor and Employment – Administrative Ruling nº 604 issued 1st June 2002, which creates Centers for the Promotion of Equal Opportunities and Fight against Discrimination within Regional Secretariats for Labor (DRTs).[55]

The attention given to the matter in terms of legislation and public policies is not consistent with the care and assistance to which women are actually entitled during pregnancy and in their post-childbirth period. A very serious problem in the country is maternal mortality/morbidity, which evinces the distance between the discourse and the international commitments undertaken by Brazil, and the Brazilian reality. This situation led to the creation, within the Chamber of Deputies, of a Parliamentary Inquiry Committee (CPI) aimed at investigating "The Incidence of Maternal Mortality in Brazil". This Committee concluded its activities on 22 August 2001, after sixteen months of work, and submitted a report to the Chairman of the Chamber of Deputies. Among the findings and conclusions drawn by the Committee are: lack of knowledge, on the part of governmental and non-governmental agencies, about the number of maternal deaths in Brazil; estimation of 137 maternal deaths for each 100,000 live births; recommendation that projects having to do with women's health be urgently examined – particularly the one that characterizes as a crime the conduct of doctors that fail to appropriately fill out death certificates, and the one that requires notary's offices to forward, on a quarterly basis, to the National Institute of Geography and Statistics (IBGE) and to the Municipal Secretariats for Health, data on deaths, specifying the cause of death; and the realization that over 90 percent of maternal deaths could have been avoided through pre-natal care.

**Factors and Difficulties**

With regard to affirmative actions, it is important to emphasize that:

a) given the way they are being defined and written, some affirmative actions transpose a temporary dimension and become permanent mechanisms, intended to establish levels of balance between the sexes. An example of this is the law establishing percentages for proportional elections: in a first moment, this law was approved as a percentage for women candidates, but subsequently it was amended to include a quota for candidates of both sexes, contemplating minimum and maximum percentages for candidates of each sex. These measures, although insufficient to change the scene and the relations of power by themselves, contribute to a relocation of opportunities for several social segments, in terms of access to power, to positions in the labor market, to places in universities and in training courses, etc. They therefore demand its inclusion into broader public policies, through the necessary budget allocation;

b) Adoption of the percentage system in politics was preceded by constitutional provisions that established percentages by sex and for the physically disabled in the labor sphere, with the allocation of positions/offices to disabled persons who pass public service entrance examinations. Starting from these two experiences, it will be possible to extend the percentage system to other social segments, such as, for example, to women who are heads of households in the field of housing and acquisition of public land; or to the black population, in the fields of higher education, elections and in some spheres of labor. The use of affirmative action through the percentage system deserves to be further discussed in terms of its repercussions and impact on society;

c) Within the scope of the State, the Executive Branch has implemented some initiatives in certain Ministries, indicating the possibility of and the need to intensify programs and establish workgroups that seek to identify and combat inequality between men and women within their organizational frameworks and staff. In general terms, one realizes that initiatives in this regard are still timid, and that many times the workgroups show little effectiveness. Also worth mentioning are the initiatives of the Ministry of Agrarian Development, which defined internal percentages for

[55] The Regional Secretariats are the local arms of the Ministry of Labor and Employment. They act in the most different areas under their responsibility, such as inspecting the enforcement of rules, publishing documents and providing information to the public, among others.

women in its managerial positions. Also worthy of special mention are the initiatives of the Ministry of Labor and Employment, which created workgroups to fight against race and gender discrimination, and established centers for the promotion of equity;

d) As for the Judicial Branch, as compared to the Legislative and Executive branches, the difficulties for adoption of affirmative measures are greater. The perspective of equity without simultaneous regard for uniqueness and differentiation still prevails. Nevertheless, some initiatives are beginning to emerge, with a view to the qualification of professionals in the field of law who are sensitive to the issue of human rights from the gender perspective, although this is not true with regard to the racial or ethnical perspective;

e) Finally, it is worth mentioning the precariousness, and even the absence of statistical data and information aggregated by sex and race/ethnicity. Such data is necessary, so that truthful diagnoses may be developed on the situation of these segments, to enable the creation of public policies that actually produce changes in the situation and in the relations of these segments, the follow-up and monitoring of these policies and, especially, of affirmative actions, in order to ensure qualified assessment processes.

The protection of maternity in work and social security rights is not new in Brazil and it is gradually losing the patronizing character it initially had. The concept of motherhood as a social role is more recent and has, among other supporting axles, the child education system ensured by the Constitution of 1988 and regulated by later laws.

Full payment of the maternity salary is being ensured in the country, which signed ILO Convention 103, an unprecedented instrument on the adoption of maternity-protection measures. This Convention was amended by the recently-approved Convention 183, which points out to the flexibility of acquired rights: if, on the one hand, it enlarges on some provisions (among which is the extension of maternity-leave from 12 weeks to a minimum of 14 weeks), on the other hand it opens up the possibility that pregnant women might be dismissed from work for reasons other than pregnancy, and allows for the exclusion of some categories of working women, in addition to allowing agreements between the government and employers and workers' entities regarding the established protections. It is therefore likely that the Congress will pass, and the Brazilian government will sanction the new Labor Convention.

Currently, Bill nº 5.483 of 2001 is pending examination by the Federal Senate. The Bill amends article 618 of the Labor Code (CLT), by introducing the following wording: "*Art. 618. The working conditions adjusted through convention of collective labor agreement shall prevail over the provisions of the law, provided that they do not contradict the Federal Constitution and the rules on labor safety and health*". The Bill passed the Chamber of Deputies on 4 December 2001, in an urgent proceeding. It aims at privileging the flexibility of negotiations to the detriment of legislative strictness. In the assessment of the women's movement, it is frightening, since it endangers the minimum protective parameters ensured by the Constitution,[56] and it thereby becomes even more dangerous within a context of recession and high levels of unemployment.

[56] The Brazilian Constitution of 1988, in its Article 6, defines as social rights: education, health, labor, leisure, security, social security, maternity and childhood protection, and assistance to the needy. Article 7 also provides for: vacation, 13th salary, remunerated rest, and fines for contract rescission, among others, This constitutional provision also ensures some exclusive rights to women, such as maternity-leave, maternity salary and protection to the participation of women in the labor market.

***Article 5***

***States Parties shall take all appropriate measures:***

***(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;***

***(b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.***

**Legislative Measures**

Formal equity is an express right under every Brazilian law, and provided for in article 5 of the Federal Constitution.

Equity between the couple, as provided for in § 5 of article 26, *"The rights and duties of marital society shall be exercised equally by the man and the woman"* ensures the establishment of new social patterns in gender relations.

Also with regard to family organization, especially concerning children, the Statute of the Child and the Adolescent, which has been in force in Brazil since 1990, advocates full protection, under which the interests of the children are considered as priority for every purpose, as proposed by the United Nations.

On the other hand, the new Civil Code provides for formal equality in relations between men and women in marriage and in the headship of the household.

It is worth mentioning that, before the 1988[57] Constitution, other instruments, such as the Constitution promulgated by the military regime in 1967, had already established the guarantee to formal equity – which can be summed up as equality before the law. However, diversity was not construed as a value in itself. The features, qualities and roles of men and women were not understood as a result of historical processes but rather of natural processes. The 1988 Constitution was the first legal instrument to provide for diversity as an asset and, therefore, it reinforced the non-sustainability of formal inequality between men and women, a phenomenon which is especially discernible in domestic relations.

The Federal Constitution established a new family model, with equal rights and duties, ensuring formal equity, besides establishing a stable union as a family unit in paragraph 3 of article 226. This recognition of stable unions represents a new stage in the evolution of Brazilian Law, which characterizes matrimonial relations not only as mandatory, but also as relationships that involve affection and solidarity. Nonetheless, article 1520 of the recently-approved Civil Code reinforces, on the one hand, the maintenance of female morals and, on the other, recognition of the value of a family model protected by marriage. By determining that only exceptionally *the marriage of those who have not yet reached the proper marrying age so as to avoid the application or fulfillment of criminal punishment, or in case of the woman's pregnancy will be allowed*, the new code provides for the protection of pregnancy not as an equal responsibility between both parents, but as something that should occur within wedlock. This protection reinforces a certain "moral" family model to the detriment of shared and effective responsibility between the parties concerned.

[57] After proclamation of the Republic, formal equality has been provided for in all Brazilian Constitutions, except for the 1937 Constitution. The 1934 Constitution ensures formal equality in article 113, I, by establishing that "All are equal before the law. There shall be no privileges or distinction by reason of birth, sex, race, profession, social class, wealth, religious belief or political ideas". The authoritarian Charter of 1937 eliminated equality on behalf of national security. The 1946 Constitution recovers the principle of formal equity in article 114, paragraph 1: "All are equal before the law". And in 1967 the precept of formal equality was established as a precept which all other laws should be subject to.

In spite of the fact that the 1988 Constitution provides for different family models in paragraph 4 of article 226, these distinctions are focused exclusively on heterosexual relations.[58] This means that the definition of family and the proposition of a "space of solidarity and affection" in informal relations apply exclusively to relations between men and women. The Civil Code, in turn, incorporates this model by reinforcing, in articles 1511 and 1517,[59] family relations based on the heterosexual standard, "good morals", and the so-called "natural" reproduction ability. This concept makes diversity unfeasible as far as sexual identity is concerned, as against other different forms of union, by reiterating a mandatory family model instead of a space for the promotion of human dignity.[60]

**State Constitutions**

The State Constitutions and the Organic Law of the Federal District establish some general measures for the construction of equity. In this regard, most[61] of such Constitutions reiterate article 125 of the Federal Constitution – which establishes as one of the objectives of education 'preparation for the enjoyment of citizenship'. Some also emphasize the importance of human rights as a reference for education.

In addition to these measures, there are others specifically intended to change the patterns of socio-cultural conduct of men and women: they refer to the image of women, to an education free of stereotypes, to the fight against violence, to the recognition of maternity as a social function, and to equity between men and women in relation to their children's upbringing.

In the field of education, the states of Amapá, Bahia, Goiás and Rio de Janeiro, as well as the Federal District, provide for the elimination of the stereotype image of women in school textbooks and teaching material. Some even mention changes in the curriculum and the training of educators with a view to the promotion of gender equity.

It is interesting to notice that the Organic Law of the Federal District also refers to university education and to the historical achievements of women: *"The official education network shall include in its curriculum, at all levels, subjects on environmental education, sexual education, traffic education, communication and arts, in addition to other subjects that are appropriate to the specific reality of the Federal District"*. According to § 3, *"the school and university curriculum shall include, in the set of disciplines, contents on the fight of women, black and Indigenous people in the history of mankind and of Brazilian society"*.

The social image of women is also mentioned in the Constitutions of the states of Amapá, Bahia and Pará, which establish as a duty of the State *"to ensure, before society, the social image of women with dignity as mothers, workers and citizens, with equal rights and duties in relation to men* (Amapá). The Constitution of Bahia determines that *the State shall ensure, before society, the social image of women as mothers, workers, and citizens, with equal rights in relation to men, with the aim of preventing the distribution of messages that violate the dignity of women by reinforcing sexual or racial discrimination; ensure non-differentiated education by training its educational agents both in pedagogical behavior and in the contents of the teaching material, so that they do not discriminate against women"*.

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[58] It is worth emphasizing here the issuing of Decree nº 4.229 of 13 May 2002, which reviewed the National Human Rights Plan and offered the following proposals for State action in the area of sexual orientation: an amendment to the Federal Constitution to guarantee the right to free sexual orientation and the prohibition of discrimination by reason of sexual orientation; the regulation of civil partnership between persons of the same sex and of the law re-designating sex and change of civil registry for transsexuals; improvement of the penal legislation with regard to discrimination and violence motivated by sexual orientation; exclusion of the term 'pederasty' from the Military Penal Code; inclusion of data on sexual orientation in demographic censuses and official surveys.

[59] Article 1511 of the new Civil Code establishes that "Marriage establishes full communion based on equality between the spouses and creates the legitimate family". Article 1517 establishes that "Men can marry at the age of 16 with the authorization of both parents or their legal representatives, until they reach civil majority".

[60] Ibem idem. pages 325-326.

[61] Alagoas, Amapá, Ceará, Goiás, Espírito Santo, Mato Grosso, Minas Gerais, Paraná, Pará, Paraíba, Rio de Janeiro, Pernambuco, Piauí, Rondônia, Rio Grande do Norte, Rio Grande do Sul, Roraima, Sergipe, São Paulo, and Tocantins.

It is worth remarking the relevant initiative of State Constitutions to overcome the stereotype image of women by seeking to present them in their integrity, emphasizing their image as mothers, workers and citizens. Nevertheless, the legal instruments sometimes fail to provide a dignified social image of women when they are not mothers, workers or citizens. The segmented vision of women as provided for in State Constitutions is commented in detail in the text of article 4 –2 of CEDAW.

Equity between fathers and mothers concerning their responsibilities towards their children is emphasized in some Constitutions, such as that of Rio de Janeiro, in its article 48: "*The rights and duties of conjugal society are exercised equally by men and women*". Maternity is provided for as a social function in the Constitutions of Goiás, Pará and Bahia, while the expectation of differentiated duties regarding the children is established in several provisions, such as article 278, VII of the Constitution of São Paulo, which ensures the mother's permanence in the hospital ward with her child, but does not establish the same prerogative for the father. In the same regard, the Constitution of Rondônia provides for the possibility that government employees who are mothers, tutors or guardians of, or responsible for the education of physically and mentally handicapped children be released from compliance with the regular workload without loss of remuneration.

Based on the fact that violence against women in the family is one of the symptoms of hierarchical gender relations, the measures to eliminate this form of violence contemplate the provision of article 5 of CEDAW, in the sense of changing socio-cultural behavior patterns for the purpose of eliminating customary discriminatory practices.

The state Constitutions of Minas Gerais, Mato Grosso do Sul, Paraíba, Paraná, and Tocantins as well as the Organic law of the Federal District, refer to domestic violence. Other Charters establish measures to prevent this form of violence: Amapá, Bahia, Espírito Santo, Goiás and Rio Grande do Sul.

It is worth emphasizing, as well, the intent of establishing special Police Stations[62] to deal with cases of violence against women, the development of multi-disciplinary assistance programs[63] aimed at female victims of violence, and the creation of shelters[64] for women at risk.

The Constitution of the state of Tocantins provides for the provision, by the Single Health System (SUS), of special medical and psychological care for women victims of rape.

**Judicial Measures**

Equity and humanity standards are still based on heterosexual models, thereby limiting the development of the individual's personality, in addition to promoting discrimination against homosexuals. Nevertheless, despite the lack of a constitutional provision on the matter, mention should be made of judicial sentences that recognize the union between individuals of the same sex, by so interpreting article 3, subparagraph IV of the Federal Constitution, which establishes as one of the objectives of the Federative Republic of Brazil "*to promote the well-being of all, without prejudice as to origin, race, sex, color, age and other forms of discrimination*".

> *Appellate Review in a Civil Court. Statement of Implied Partnership. Homosexual Relationship. Competence.*
>
> *Proceeding involving family law matter related to its existence vis-à-vis the legal system. Competence of the 4th Civil Court by interpretation of subparagraph III, article 11 of Resolution n° 01/98. Competence refused.* AC. 598362655/RS

[62] Amapá, Bahia, Ceará, Distrito Federal, Mato Grosso do Sul, Paraná, Rio de Janeiro, Rio Grande do Sul, and Sergipe.
[63] Bahia , Goiás, Pará, Paraná, Rio Grande do Sul, São Paulo, and Sergipe.
[64] Bahia, Ceará, Distrito Federal, Mato Grosso, Paraná, Piauí, Rio de Janeiro, and Tocantins.

Another example is the decision of the Eighth Appellate Court of the State Supreme Court of Rio Grande do Sul issued on 17 June 1999, which defined the competence of Family Courts to judge cases involving homosexual relations:

> *Homosexual Relations. Competence to judge separation of implied partnerships involving couples formed by persons of the same sex. Considering that the situation involves relations of affection, the case should be judged by a family court, as in the case of separations involving heterosexual couples.*

Even in the absence of consensus on the Judicial Branch concerning homosexual relations and identity, decisions such as these represent an important advance towards free sexual expression, although still incipient.

With regard to reproduction rights, it is worth mentioning that on 30 May 2000 the Federal Supreme Court accepted the Extraordinary Appeal, which intended to deny adoptive mothers the right to maternity-leave. As stated in the abstract of the sentence:

> *ABSTRACT: The right to maternity-leave provided for in article 7, subparagraph XVIII of the Federal Constitution aimed at benefiting pregnant workers shall not be extended to adoptive mothers. The matter shall therefore be dealt with by the ordinary legislator.*
>
> *SENTENCE: After examining, reporting and discussing these court records, the Associate Justices of the First Panel, based on the trial minutes and stenographic notes have unanimously accepted the appeal, according to the vote of the Rapporteur.*

Well, the exercise of maternity by pregnancy, adoption or conception and contraception technologies comprises the most elementary set of reproduction rights. This decision therefore reinforces a maternity model founded on biology, and discriminates against the group of women who cannot bear children and choose to adopt them.

The need to ensure freedom of reproduction presupposes the existence of free and autonomous subjects, which are an essential element to the establishment and effectiveness of human rights. As seen by the women's movement, by limiting this right and preventing adoptive mothers from enjoying the right to maternity-leave, the Brazilian Judiciary is directly violating reproduction rights.

However, the already mentioned Law nº 10.421 of 15 April 2002 extended to adoptive mothers the right to maternity-leave and maternity salary, thereby preventing the issuing of new sentences such as the one described above.

**Government Actions**

In contemporary societies, the concrete forms of women's exclusion or inclusion are supported, among other factors, by the ability and subtleness with which the mass media disseminate and maintain a certain image of women and women-related matters, i.e., by the stereotyped social roles displayed in advertisements and the media in general. This has always been one of the concerns of the National Council of Women's Rights (CNDM), an agency linked to the Ministry of Justice which, since its inception in August 1985 has promoted publicity campaigns questioning the stereotyped image of women. CNDM also has the objective of bringing women out of invisibility, and taking up their leading role in history. With this aim, it has regularly invested in publicity campaigns using various means of communication (newspapers, magazines, posters, radio and television) to raise public awareness about the main themes related to women: violence against women, racial discrimination, urban and rural labor, different salaries, women's health, and political inclusion.

In 1985 a campaign entitled *Constituição para valer tem que ter palavra de mulher* (A fair Constitution must listen to women) was aimed to make the population in general sensitive to the importance of ensuring women's rights in the Constituent Assembly.

A national campaign entitled *Discutindo na escola o papel da mulher na sociedade* (Discussing the social role of women in the school), which was developed from 1986 to 1988 through a partnership between CNDM/MJ and the National Institute for Educational Studies and Research of the Ministry of Education (INEP/MEC), aimed at eliminating the stereotyped image of female and male roles. In 1996, a protocol of cooperation signed between CNDM and MEC led to the selection and recommendation of school textbooks that do not reproduce gender and race/color stereotypes.

Also worthy of mention are the campaigns developed by CNDM about black women, for the purpose of rescuing their history and image. In 1987, CNDM participated in, supported and organized several activities on the theme; two projects stand out as examples: *Data on Black Women* in partnership with Brazilian Institute of Geography and Statistics (IBGE), and *Black Women in the Fight for Abolition*.

Another communication strategy adopted by CNDM in 1987 was the visibility given to violence against women through the media. Statistical data and spectacular cases of violence against women were widely broadcast. At the same time, the Council kept in constant touch with Secretariats for Public Security in the states, with the intent of expanding the sampling of crimes against women.

The small number of women participating in decision-making forums has been a permanent concern of the Women's Delegation in the National Congress, particularly after the IV World Conference on Women of Beijing, where the theme was broadly discussed. Therefore, in 1997, when Congress passed Law nº 9594/97, establishing a minimum quota of 30 percent for women to run for elective offices in Brazil, congresswomen joined forces and launched, in partnership with IBGE, a nationwide campaign entitled *Women without Fear of Power*. In 2000, an election year, another campaign dealt with the same theme: *Women in Politics, Women in Power*, a partnership between the Women's Delegation in Congress and the National Council on Women's Rights. It is important to emphasize that both campaigns counted on the full support of the women's movement.

The creation, in 1983, of the Program of Full Assistance to Women's Health (PAISM) of the Ministry of Health represented the commitment of the Brazilian government to the improvement of women's health condition, and the response to one of the major claims of women's movements. Starting in 1985, with the inception of CNDM, PAISM could count on more specialized political collaboration, which ensured the improvement of projects and political actions. PAISM currently counts on projects that focus on differences (race, age, region, etc) among women and sensitizes to them, on the improvement of assistance to high-risk pregnancy, training of nurses and traditional midwives, prevention and treatment of STD/AIDS, prevention and treatment of uterus and breast cancer, assistance to women in situation of violence, etc.

In the field of culture, between 1985 and 1987 CNDM supported and encouraged, in partnership with the Ministry of Culture, several projects aimed at recognizing the value of women: Norma Bengel's *Fogo Pagu*; the Cora Coralina Contest; financial support for and participation in seminar and exhibition entitled "*The Female Look*"; participation in the III Fest Rio; partial funding of a video entitled "*Dandara, a Black Woman*"; financial support for Sandra Werneck' short film "*Ladies of the Night*"; political and financial support for Eunice Gutman's film about the Campaign of Women in the Constituent Assembly; and the *Women's Video I*.

The work for the purpose of valuing a female culture continued in 1989, through the organization and expansion of the CNDM Video Library on female themes, including the quarterly publication of titles available for disclosure within labor unions, schools, community organizations, etc. Also worth mentioning is the organization of *Women's Video II* and the publication of two books that won the Cora Coralina poetry and prose contest. In 1995, women were included for admission to the Order of Cultural Merit, which is awarded to persons who have contributed to culture in the country. The participation of women in this registry shows an upward trend, having increased from 15 percent in 1995 to 33 percent in 2000.

The *IV World Conference on Women* held in Beijing in 1995 is an important landmark for reflections on, and proposals for political action, both on the part of the various women's movements and of the National Congress, especially its Women's Delegation, as well as of the Federal Executive Branch.

The movement entitled Mobilization of Brazilian Women, which was established in 1994 and 1995, mobilized hundreds of women to write a petition to be submitted to Beijing'95. This mobilization engaged 8000 groups of women, who met in 91 events.

In tune with the Platform of Action approved in Beijing, the National Council on Women's Rights (CNDM) developed a document entitled "Strategies of Equality – Platform of Action", with the aim of implementing the commitments undertaken by Brazil during the Fourth World Conference on Women, and signed a protocol of cooperation with the Ministries of Education and Sports, Health, and Labor.

The conceptual advances consolidated in Beijing, and the recognition that the existence of democracy depends, among other achievements, on gender equity, have driven and continue to drive a series of political actions. In March 1998, the President of the Republic approved the National Program for Equal Opportunities in the Public Service (Presidential Document n° 119 of 5 March 1998), which was intended to correct the inequalities in the Public Power that had been detected in the statistical survey on the situation in the civil service ordered by the Ministry of Administration and State Reform. The disparities between men and women are reflected in the following figures: in 1998, 44 percent of all public servants were women, but only 13 percent of senior positions were held by women. In addition to gender inequality, there is another worrisome point – the color/race inequality: of all the women who received a bonus for Higher Assistantship Positions, 82.80 percent were white.

Based on the National Program for Equal Opportunities in the Public Service, Executive Ruling n° 2.870 of 28 September 1998 issued by the Ministry of Administration and State Reform recommended that 30 percent of all senior positions should be held by women, as well as the promotion of training courses and workshops focused on gender for female public servants. The first stage of the course entitled "Management Program for Women in the Public Service" was developed by the School of Financial Administration (ESAF) and later on by the National School of Public Administration (ENAP), where it continues to be taught on a regular basis. The course is aimed at management improvement and development of female public servants, and it qualifies women to exercise leadership at decision-making levels within the public administration, for the purpose of promoting equal opportunities. The target-audience of the program are female public servants who hold or aspire to hold managerial positions. Since 1998, twenty groups totaling 379 female government workers have graduated from the program.

In order to give continuity to training programs with a focus on gender, the Secretariat for Management of the Ministry of Planning, Budget and Management decided to invest in the development of women who hold decision-making positions. To this end, in 1999 an agreement was signed with the Center for Female Leadership (CELIM) for the development of a training program involving some 60 women who administer the programs of the Multi-annual Plan (2000-2003) of the present government. The first course contemplated two forty-hour modules; it included 30 women and was held at the headquarters of CELIM in Rio de Janeiro at the end of 2000 and beginning of 2001. The second course was reduced to 20 hours and was scheduled for the end of 2001 at ENAP, in Brasilia. In addition to training women in technical abilities, the initial proposal of the course was to establish a network of women and offer a space for reflection on what it actually means to be a woman, and on the many roles that women play in their daily lives.

A unique Program on Affirmative Actions was developed within the Ministry of Agrarian Development. Its recent origin (1999) coincides with the meetings of the Women's Forum of the Institute of Colonization and Agrarian Reform, which discussed the role of women within the Institution. The movement gained impetus, reached several regions in the country and influenced the latest public policies implemented by the Ministry of Agrarian Development, along with the commitments undertaken by the Brazilian government to the international community.

In 2000, several training courses and workshops were held within the Ministry of Agrarian Development, with the intent of establishing a new culture in the work place, by eliminating prejudice and promoting sensitivity in the players directly involved in this process. Actions to create equal opportunities for public servants and beneficiaries of the agrarian reform have been developed, such as, for example, the technical cooperation project "Gender and Agrarian Reform" with FAO, which had the purpose of providing inputs for the development of public policies to diminish the legal, bureaucratic, socio-economic and behavioral obstacles faced by women within the scope of the agrarian reform. The *Dom Helder Câmara Project* on sustainable development for agrarian reform settlements in the semi-arid region of the Northeast also issued a diagnosis of economic and social relations in the region, which showed the inclusion and participation of women. Training courses are being held for the technical staff. Actions aimed at the beneficiaries of the agrarian reform have also been planned.

On 8 March 2001, the Ministry of Agrarian Development issued Executive Ruling nº 33, which established a Program for the Promotion of Equal Opportunities among its employees and beneficiaries of the agrarian reform. The program established a quota of 30 percent for women in management positions by 2003. Later on, on 4 August 2001, with the intent of fulfilling the commitment undertaken by the Brazilian government at the World Conference against Racism, Racial Discrimination, Xenophobia and Correlated Intolerance, which was held in Durban, Africa, from 31 August to 7 September 2001, the Ministry issued an Administrative Ruling establishing that 20 percent of its positions should be held by black people by 2003.

Also worth mentioning is the issuing of Decree nº 4.228 of 13 May 2002, which established, within the scope of the Federal Public Administration, a National Affirmative Actions Program which, in subparagraph I of article 2 provides for compliance, by the agencies of said Administration, with the requirement of percentage goals regarding the participation of Afro-descendants, women and physically disabled persons in Higher Management and Assistantship positions (DAS).

**Factors and Difficulties**

Gender prejudice[65] is expressed by ascribing the same features to all women, a practice that gives rise to a stereotyped mental process. The assignment of different roles to men and women is one of the expressions of this mental process that threaten the consolidation of gender equity the most. The system of role distribution not only establishes frontiers between genders, but also assigns lower value to the roles played by women, regardless of the properties inherent to the role itself and, therefore, based on the mere fact that such roles are played by women. It is worth recalling that the devaluation does not refer to the role itself, but rather to women and that it has contaminated the roles they play.

This role-distribution system, which is based mainly in the criterion of gender difference, tends to discard other role-assignment criteria such as educational level, acquired competence, and individual abilities and projects. The use of gender difference as a criterion for role assignment tends to perpetuate the devaluation of women and deprives women from many important economic, social, political, and cultural opportunities.

Data on household and individual income, poverty and access to power and property indicate the consequences of this role-distribution system. The data on household income by sex and color of the heads of mono-parental households (Table 11) show the connections of gender and color differences.

[65] Gender, in this case, is regarded as the relationship between individuals that has been socially built within certain historical contexts and that crosses and builds the identity of men and women. Gender is also one of the pillars of social relations, since it regulates man-woman, man-man, and woman-woman relations. As it is socially built, gender embodies the sexuality (and not the opposite) that is exercised as a form of power. Therefore, gender relations are crossed by power, and sexuality constitutes the support for gender inequality.

**TABLE 11**

**Household Income by Sex and Color of the Head of Mono-parental Households – 1998**

| Sex/Color | Income | Weight in Million (in households) | Percentage | Probability of being poor |
|---|---|---|---|---|
| White Man | 693.35 | 1.8 | 1% | 8.0 |
| White Woman | 421.41 | 5.1 | 3% | 11.9 |
| Non-white Man | 288.21 | 1.6 | 1% | 17.3 |
| Non-white Woman | 177.30 | 3.9 | 2% | 27.5 |

Source: Microdata from the 1999 PNAD

The table above shows, first of all, the consequences of color discrimination: the income of households the heads of which are white men and women is significantly higher than that of households headed by non-white men and women. Therefore, the income of households that are commanded by non-white men and women is about 58 percent lower than that of households headed by white men or women, respectively. By comparing households in which the persons in charge are non-white women to those which are headed by white men, it may be noticed that the household income of the first group is 74 percent lower than that of the latter.

Secondly, it may also be noticed that within color discrimination there is gender discrimination as well. As a result, the income of white and non-white women is lower than that of their non-white partners. The income of households commanded by white and non-white women is about 40 percent lower than that of households led by white and non-white men, respectively (39.2 percent in the case of white women and 38.5 percent in the case of non-white women).

Thirdly, the probability of being poor is higher in households where the heads are non-white and white women and non-white men, than in households where the persons in charge are white men. The same probability in households where the heads are non-white women is at least three times higher than that of households headed by white men; and it is also two times higher than that of households commanded by white women and 60 percent higher than that of households led by non-white men.

Table 12 also shows the distribution of color and gender discrimination expressed in the extreme situation in which white men have the highest income(R$ 752.00) and non-white women the lowest income (R$ 206.00). The income of non-white women is as much as 70 percent lower than that of white men, 53 percent lower than that of white women and 40 percent lower than that of non-white men.

**TABLE 12**

**Total Monthly Income including all Types of Jobs –**
(Employed persons over 16 years of age)

| Group | Monthly Income (in Real) |
|---|---|
| White Men | 752.11 |
| White Women | 440.58 |
| Non-white Men | 351.98 |
| Non-white Women | 206.89 |

Source: Microdata from the 1999 PNAD (National Survey by Household Sampling)

Table 13 shows the monthly income of all workers by sex, color and level of education.

**TABLE 13**
**Total Monthly Income of All Workers by Sex, Color and Level of Education**

| Color / Education | Men | Women | Total | Women-Men Ratio |
|---|---|---|---|---|
| Non-white persons | | | | |
| Up to 3 years of schooling | 199.91 | 83.21 | 157.93 | 42% |
| Between 4 and 7 years of schooling | 323.65 | 154.66 | 259.63 | 48% |
| Primary education | 406.78 | 224.87 | 334.29 | 55% |
| Secondary education | 630.86 | 345.10 | 486.21 | 55% |
| College education | 1.409.68 | 774.22 | 1,067.43 | 55% |
| Total | 351.98 | 206.89 | 294.40 | 59% |
| White | | | | |
| Up to 3 years of schooling | 199.91 | 83.21 | 157.93 | 40% |
| Between 4 and 7 years of schooling | 323.65 | 154.66 | 259.63 | 42% |
| Primary education | 406.78 | 224.87 | 334.29 | 51% |
| Secondary education | 630.86 | 345.10 | 486.21 | 53% |
| College education | 1,409.68 | 774.22 | 1,067.43 | 55% |
| Total | 351.98 | 206.89 | 294.40 | 59% |

Source: Microdata from the 1999 PNAD

What stands out on the table above is the fact that education is not a priority factor to explain why non-white persons and women have lower incomes.

Color prejudice is reflected in the fact that the income of both white men and women is higher than that of non-white persons, regardless of their educational level.

Gender prejudice, in turn, is reflected in the fact that the income of white and non-white men is higher than that of white and non-white women, regardless of their educational level.

Finally, it is worth noticing that the differences in the income of men and women (whether white or non-white) decrease as the educational level increases. In the group of persons with up to 3 years of formal education, the income

of white women corresponds to 40 percent of the income of white men. Among non-whites, women's income corresponds to 42 percent of men's. On the other hand, among those with college education, women's income corresponds to 55 percent of men's, both in the white and non-white population.

Data on women's participation in the federal public administration strongly suggest that, even within the Executive Branch, women are discriminated against. According to data from the Ministry of Planning, Budget and Management for 2001:

- Women account for 45.2 percent of the overall number of employees of the Federal Public Administration;
- Women's participation exceeds men's participation in State Governments (58.3 percent), in the Ministry of Social Security and Welfare (58.1 percent) and in the General Advocacy of the Union; women's participation equals men's in the Ministries of Health (50.0 percent) and Sports and Tourism (49.9 percent). In the other agencies of the Public Administration, women's participation is lower than men's, with the lowest level recorded in the Ministry of Justice (16.9 percent), followed by the Ministry of Agriculture and Supply (23.8 percent). It is even below 40 percent in the Presidency of the Republic and in the Ministries of Science and Technology, Agrarian Development, Environment, Mines and Energy, Planning, Budget and Management, and Transportation;
- Women hold 42.1 percent of the Higher Management and Assistantship positions (DAS). However, an analysis of the different levels of Higher Management and Assistantship positions indicates that the participation of women in such positions decreases as the DAS level increases. If on the one hand women hold 49.0 percent of DAS-1 positions (the lowest level), on the other they hold just 13 percent of DAS-6 positions (the highest level). Therefore, High Management positions represent the bottleneck of women's participation in the Public Administration.

**TABLE 14**

**Women's Participation and Average Remuneration of Higher Management and Assistance Positions - DAS - May 2001**

| DAS | Average Remuneration (in Real) | Women's Participation (%) |
|---|---|---|
| DAS-1 | 3,681 | 49.0 |
| DAS-2 | 4,149 | 41.6 |
| DAS-3 | 4,408 | 40.1 |
| DAS-4 | 5,724 | 32.0 |
| DAS-5 | 7,01 | 20.4 |
| DAS-6 | 8,515 | 13.7 |
| Total | 4,357 | 42.1 |

Source: Ministry of Planning, Budget and Management – Human Resources Secretariat.
Statistical Newsletter nº 62. Brasilia, June 2001.

- Furthermore, out of the 29 State-level careers, in 1998 women's participation exceeded 50 percent in just six: Public Defender, Chancery Officer, S&T Research Analyst, Censor, Budget Specialists, and Chancery Assistant (ENAP – Research Report – A Diagnosis of Women's Situation in the Federal Public Administration, Brasilia, September 1998).

It is worth emphasizing that the issues involving stereotypes are linked to common sense and strongly disseminated in the Brazilian society. They give rise to two serious problems: 1) the marketing of the image of woman – women as a commodity associated with products that have men as their target audience (beer, cars, etc.); 2) the reproduction in media entertainment shows (soap operas, live shows, etc.) of the same consumption patterns or the maintenance of myths related to sexual and domestic violence, prostitution, etc. The aggravating circumstance in these cases is the fact that in Brazil the means of communication are granted by the State and, therefore, subject to constitutional rules. However, they are not subjected to any regulations regarding the limits of programming.

*Article 6*

***States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.***

**Legislative Measures**

The visibility of the various forms of sexual exploitation and traffic in women and girls is growing in Brazil. Mobilization of the Brazilian government and society is also growing. It is necessary to face up to the organization of sexual exploitation; the traffic in women between cities and regions; the organization of crimes in national and transnational networks; the participation of police officers and their connivance in sexual exploitation and traffic; the impunity of abusers, aggressors, exploiters, and traffickers.

The Federal Constitution of 1988 ensures significant advances towards the guarantee of individual, collective and social rights. It determines that it is the duty of the family, of society and of the State to protect children and adolescents from all forms of *negligence, discrimination, exploitation, violence, cruelty and oppression*. In article 226, paragraph 8, it also establishes that it is the duty of the State to create mechanisms to suppress violence within the family: *"The State shall ensure assistance to the family in the person of each of its members, creating mechanisms to suppress violence within the family"*. Furthermore, in article 227, paragraph 4, the Charter states that *"The law shall severely punish abuse, violence and sexual exploitation of children and adolescents"*. In article 5, paragraph 2, it also assigns constitutional status to the international treaties and conventions to which the Brazilian government is a party, including those that refer specifically to the human rights of women: *"The rights and guarantees expressed in this Constitution do not exclude others deriving from the regime and from the principles adopted by it, or from the international treaties to which the Federative Republic of Brazil is a party."*[66]

The Constitution of 1988 brought about a new policy on protection and assistance to childhood and adolescence. Children and adolescents were given the right to a dignified life, health, education, leisure, work and, above all, to legal assistance. Two years later the constitutional precepts were regulated by Law 8,069 of 13 July 1990, which established the Statute of the Child and the Adolescent (ECA).

ECA ascribes children and adolescents the quality of subjects with rights, by establishing a broad system of guarantee of rights, and full and integrated protection of the child and the adolescent. It brings to the national scene a new paradigm for the analysis and understanding of acts of sexual violence committed against girls and adolescents and that violate their fundamental rights to life, health, respect, liberty, and dignity.

ECA considers rape and violent indecent assault as hideous crimes, as provided for in Law 8,072 of 25 July 1990, which amended article 263 of the Statute of the Child and the Adolescent with regard to punishment for rape and violent indecent assault. If the assumption of maltreatment, oppression, or sexual abuse committed by the parents or by the person responsible for the child or adolescent is confirmed, the judicial authority may issue a restraining order removing the aggressor from the common household.

The Brazilian Penal Code of 1940 reproduces stereotypes of women and prejudices against them through terms such as an *honest woman* and *virgin woman*, which pervade the concepts of sexual crimes. Sexual violence is characterized by conducts typified as rape, violent indecent assault, violent assault through deceit, sexual possession through deceit, sexual harassment, seduction, violent abduction or through deceit, consensual abduction, prostitution, enticement and sexual exploitation of children and adolescents, among others; they are evidences of crimes typified as

[66] As previously mentioned in this report, there is great discrepancy in terms of doctrine and jurisprudence with regard to the hierarchy of the treaties protecting human rights in Brazil. There are four different lines of thought in support of: a) the supra-constitutional hierarchy of human rights treaties; b) the constitutional hierarchy; c) the supra legal although infra-constitution hierarchy of these treaties; and d) the equal hierarchy between treaties and the federal laws (then majority position in the Federal Supreme Court).

sexual crimes and specified in the Chapter on *Crimes against Sexual Freedom*. Nevertheless, they are described under the Title on *Crimes against Custom* in the Penal Code, leading to the understanding that the main issue is not restoring the violence against women, but rather recovering social morals.

There is no punishment for prostitution itself but rather for the exploitation of prostitution by third parties. The Penal Code punishes those who induce someone to satisfy the lasciviousness of others (article 227) and those who induce or attract someone to prostitution, facilitate it or prevent someone from leaving it. It punishes those who exploit prostitution by maintaining brothels or bawdy houses on their own or in behalf of a third party, with or without intended profit or direct mediation by the owner or manager (article 229). It also punishes pandering (article 230), as follows: *"taking advantage of the prostitution of others by participating directly in the profits or being fully or partially supported by persons engaged in prostitution"*. Therefore, it is possible to affirm that the exploitation of female prostitution is broadly typified as a crime in Brazil. However, reports on this type of crime indicate that the prohibition is not effective, for such practice is a fact throughout the country.

With regard to the elimination of traffic in women, Decree nº 37.176 of 15 April 1955 issued by the Federal Executive Branch, *"promulgates the protocol of amendment to the Convention on the repression of traffic in women and children signed in Geneva on 30 September 1921 and to the Convention on the repression of traffic in adult women signed in Geneva on 11 September 1933, and adopted by the United Nations Assembly in Lake Success, New York, in 1947 and ratified by Brazil on 17 march 1947"*. The Penal Code also typifies as a crime (article 231) *promoting or facilitating the entry in the national territory, of women who intend to exercise prostitution, or the exit of women who intend to exercise it overseas.* In all cases, the punishment increases when violence or serious threat are involved. With regard to traffic, the age of the victim is irrelevant. What counts is the fact that the victim is a woman. The rule only restricts traffic intended for prostitution when other forms of sexual exploitation, such as the production of pornographic material, are evident.

Among the legislative measures aimed at combating sexual abuse and exploitation of children and adolescents, Law 9,970 established the National Day of Fight Against the Sexual Abuse and Exploitation of Children and Adolescents, which was sanctioned on 17 May 2000.

**Strategic Actions implemented by the Legislative Branch**

The actions within the scope of the Legislative Branch were implemented especially in the form of Parliamentary Inquiry Commissions (CPIs). In the 1990s, three CPIs were established in the National Congress plus four at state level. The work done by these commissions represented an important contribution to the collection of data on sexual violence in all regions of Brazil. They also led to a new understanding and the discussion of the phenomenon, pointing to the need of investigating sexual violence further and recommending specific measures to be adopted by the sectors concerned and competent authorities.

A CPI on the Extermination of Children and Adolescents was established in 1991. The final Commission report was presented at the National Congress on 20 February 1992. The final report on a CPI on Violence against Women, also established in 1992, was presented by the National Congress on 14 February 1993. On 21 October 1994, the National Congress presented the final report on the CPI on Child Exploitation and Prostitution started in 1993.

CPIs on Child Prostitution were established in Northern Minas Gerais and in Natal, state capital of Rio Grande do Norte, both in 1995. A CPI on the Sexual Exploitation, Prostitution, Sexual Abuse, and Maltreatment of Children and Adolescents was established in the Federal District in 1996, by initiative of the Brasília City Council of Brasília. With regard to Child and Adolescent Prostitution, a CPI on the matter was established in Goiânia, state capital of Goiás, in 1998.

The Parliamentary Inquiry Commissions contributed significantly to shed light on the issue of sexual violence, including its regional peculiarities in the country. They also disclosed the dynamics of the aggressors' criminal act, of the family's involvement, as well as to a parcel of the community that consents to this perverse practice. This fact was

revealed in a testimony, to the effect that in the "Legal Amazon region – including the states of Pará, Amazonas, Amapá, Rondônia, Maranhão, Mato Grosso and Tocantins – there are slavery routes involving girl-prostitutes. The age of enslaved prostitutes ranges from 9 to 20 years; younger and virgin girls are worth the most. What chocked the country was the fact that this trade in girls is accepted by local communities, and the members of this new professional class – the so-called 'captors', are even respected. They generally resort to techniques that vary from abduction and promises of well-paid jobs, to – what is most common – the purchasing of girls from their own families. The habit of paying for these girls is accepted in the region because the family cynically considers such payment as an 'advance' for the services that will be provided by the slave."[67]

The Parliamentary Front for the Child and the Adolescent of the National Congress, which was formally established in 1993, represented for the National Congress, the population and the entities that defend children's rights, an instrument in the fight for a dignified childhood. The Front currently counts on 73 Congress representatives, both Deputies and Senators. Its main activities include implementation of a Parliamentary Inquiry Commission to verify the responsibility for the exploitation and prostitution of children and adolescents; participation in the launching of the Nationwide Campaign for the Elimination of Violence, Exploitation and Sex Tourism involving Children and Adolescents; and submission, in 1999, of Bill nº 267, which establishes the National Day of Fight against the Sexual Exploitation and Abuse of Children and Adolescents. In addition to these activities developed by the Parliamentary Front, several representatives have regularly submitted bills on the elimination of sexual violence.

**State Constitutions**

The State Constitutions, in their majority, ensure special protection to the family and full assistance to the health of women, children and adolescents. The following legal instruments relate specifically to sexual violence:

- The Organic Law of the Federal District establishes in article 218 that "it is the duty of Public authorities, according to the law and through the competent Secretariat, to coordinate, develop, and implement a decentralized welfare policy in tandem with public agencies and non-profit organizations, with a view to ensuring, especially, the provision of shelter and technical and social support for beggars, pregnant women, former convicts, persons released from mental hospitals, physically and mentally disabled persons, migrants, persons victims of domestic violence, and prostitutes";
- The state Constitution of Bahia provides for "the establishment of shelters for women, children and adolescents victims of family and extra-family violence, preferably in special houses, including women with unwanted pregnancy";
- The state Constitution of Rio de Janeiro ensures "assistance to women in case of sexual violence and special facilities in the guaranteed services";
- The state Constitution of Tocantins ensures "women victims of rape medical and psychological care in the units of the Single Health System"; and
- The state Constitution of Espírito Santo considers as unacceptable "the physical, psychological or moral torture that affects the dignity and integrity of the human person".

**State Laws providing for ways to combat sexual violence against children and adolescents in the states of the Federation:**

- Law nº 16.123 of 13 December 1995, sanctioned in Recife, state capital of **Pernambuco,** on 14 April 1996, provides for the punishment of commercial establishments that illegally house children and adolescents;

[67] Parliamentary Inquiry Commission Aimed at Investigating the Issue of Violence Against Women, Final Report, published in Supplement nº 202 of 14 December 1993. Brasilia – DF, page 32.

- Law nº 1.799 of 17 December 1997 establishes the State Day of Fight against Violence and Sexual Exploitation of Children and Adolescents; this day will be celebrated annually in the state of **Mato Grosso do Sul**, on 6 October; and
- Law nº 1.669 of 23 September 1997 provides for the publication, in the advertisement section of local newspapers, of a warning regarding sexual exploitation of children and adolescents in the **Federal District**.

**International Conventions on traffic in human beings**

The following is the *status* of United Nations agreements and conventions on traffic in human beings, based on data obtained from the office of the United Nations Information Center (UNIC) in Rio de Janeiro, and the Division of International Acts of the Brazilian Ministry of External Relations:

a) Agreement on the Elimination of Traffic in White Women:

The Agreement has been replaced by the Convention on the Elimination of Traffic in Persons and Pandering, and Final Protocol of 21 March 1950. According to the provisions of article 28 of the Convention, the agreement will expire when the Parties in the international instruments mentioned in its items 1, 2 and 3 join the Convention.

b) International Convention on the Elimination of Traffic in White Women:

The Convention has been in force since 3 December 1924.

c) International Convention on the Elimination of Traffic in Women and Children:

The Convention has been in force since 18 August 1933. This agreement has been replaced by the Convention on the Elimination of Traffic in Persons and Pandering, and Final Protocol of 21 March 1950. According to the provisions of article 28 of the Convention, the agreement will expire when the Parties in the international instruments mentioned in its items 1, 2 and 3 join the Convention.

The Convention was ratified by Brazil on 18 August 1933.

d) Protocol of Amendment to the Convention on the Elimination of Traffic in Women and Children of 30 September 1921 and to the Convention on the Elimination of Traffic in Adult Women of 11 October 1933:

The Protocol has been in force since 12 November 1947. It was ratified by Brazil on 6 April 1950.

e) Convention on the Elimination of Traffic in Persons and Pandering, and Final Protocol:

The Convention has been in force since 21 March 1950. It was ratified by Brazil on 12 September 1958. The final protocol of the Convention was ratified by Brazil on 12 September 1958.

In its Article 1, the Convention provides for punishment to *any person who, in order to satisfy the lust of another: 1) attracts, induces, or corrupts another person for the purpose of prostitution, even where such person consents to the act; and 2) exploits the prostitution of another person, even where such person consents to the act.*

In its article 3, the Convention also determines that, to the extent provided for in domestic legislations, any attempts and preparatory acts performed for the purpose of committing the violations described in articles 1 and 2 be punished. In its article 17, the Convention refers to measures aimed at combating the traffic in persons of either sex for the purpose of prostitution.

f) Inter-American Convention on the International Traffic in Minors:

The Convention has been in force since 15 August 1997.

g) Protocol of the Convention Against Transnational Organized Crime to Prevent, Eliminate and Punish Traffic in Persons, Especially Women and Children:

The Protocol, which was signed by Brazil in December 2000, aims at promoting cooperation for the effective prevention and combat of transnational organized crime.

**Governmental Actions**

**Ministry of Industry and Trade - Embratur (Brazilian Tourism Company)**

The EMBRATUR publicity project for the campaign entitled "Exploitation of Child Sex Tourism – Watch Out! Brazil is on the Alert" was launched on 5 February 1997 by the President of the Republic. This nationwide campaign provides a toll-free number for people to report exploitation, abuse, sex tourism and other types of violence. Reports are forwarded to the competent authorities. This campaign counts on the support of the Ministry of Justice, INFRAERO (Airports and Ports Infrastructure Company), ANDI (National Agency for Childhood Rights), ABAV (Brazilian Association of Travel Agents), ABIH (Brazilian Association of the Hotel Industry) and is meant to mobilize and make the Brazilian population and foreign tourists aware, against the commercial exploitation of sex throughout the national territory.

**Ministry of Health**

Within the range of its responsibilities, the Ministry of Health has worked to develop policies on accidents, violence and health in general, establishing guidelines and instruments so that states and municipalities can implement actions to promote health and prevent and treat injuries resulting from accidents and violence. Since 1998, violence against women, particularly domestic and sexual violence, has been one of the priorities of the Ministry of Health in the field of Women's Health.

The actions implemented by the Program of Assistance to Women's Health until 2001 had the following priority guidelines:

i. Inducing states and municipalities to implement policies aimed at preventing and treating injuries resulting from violence against women:

- Wide publication of the policies;
- Participation in local events, courses and training;
- Assistance in developing and implementing local projects.

ii. Regulatory Assistance:

- Protocol on the prevention of Aids in Victims of Sexual Violence, in 2001;
- Technical Rule on the "Prevention and Treatment of Injuries Resulting from Sexual Violence against Women and Adolescents". 40,000 copies of the Protocol were distributed among health teams, Women's organizations, Universities and Professional Associations;
- Protocol on Assistance to Intra-family Violence, in 2001, intended for Family Health Teams;
- Primer on Human Rights and Intra-family Violence developed in 2001 and aimed at the 150,000 Health Community Agents;

- Recommendations regarding Psycho-social Support for Victims of Violence.

iii. Investing in projects of Assistance to Women in Situation of Violence:

- Development/implementation of services, which in 1999 totaled R$ 106,058.00 (one hundred and six thousand and fifty-eight reais);
- The cost of the services scheduled to be developed/implemented in 2000 has been estimated at R$ 295,328.00 (two hundred and ninety-five thousand and three hundred and twenty-eight reais);
- Actions scheduled for 2001 related to the purchase of emergency oral hormonal contraception (the *next-day pill*), also used to treat Women Victims of Sexual Violence, totaled R$ 350,000.00 (three hundred and fifty thousand reais).

With regard to the results of the investments made in projects of assistance to women in situation of violence, the following deserve to be mentioned:

i. In 1997 there were only 17 Reference Services for Full Assistance to Women in Situation of Violence. In 2001 that number increased to 48 services – 10 outpatient services and 38 hospital services;

ii. 36 hospitals are being prepared to perform post-rape pregnancy interruption surgery in case there is demand for this service on the part of women victims of such aggression; 26 of them had already had at least one such case by the end of 2000.

The Technical Rule on the "Prevention and Treatment of Injuries Resulting from Sexual Violence against Women and Adolescents", which was issued in 1988, provided for the adjustment of health services to deal with such cases. Most services are located in the country's Southern and Southeastern regions. The Northern region has the highest number of units providing this type of assistance, whereas states in the other regions are endeavoring to implement integrated and humanized networks of assistance to victims of violence, through partnerships, especially with institutions in the fields of security and justice.

These results were the consequence of efforts on the part of several institutions which are endeavoring to include violence against woman as a priority issue in the national political agenda, as well as to promote proper care not only to the victims but also to the authors of gender violence.

**Ministry of Social Security and Welfare**

Within the scope of the Welfare Policy, since 1996 the Brazil Child-Citizen Program has been implementing a Project to Eradicate Child Labor, which provides financial support for families that are victims of poverty and subject their children to forced labor; and the *Cunhatã and Curumim* Project, which was implemented in 29 municipalities in the state of Amazonas, in 1997, and develops actions intended to prevent and combat the sexual exploitation of children and adolescents.

Through the *Move On, Brazil* Project, the Federal Government has included as a priority on the country's political and social agenda, the Program to Combat the Abuse and Sexual Exploitation of Children and Adolescents, which is coordinated by the State Secretariat for Welfare (SEAS).

Since 2001, SEAS has implemented the *Sentinel Program* in 242 Brazilian municipalities. The Program is based on the social agendas submitted by the municipalities and on the development of special actions meant to assist identified cases of abuse and sexual exploitation through the services of the Reference Center and the Host Family.

i. Reference Center – The Reference Center is a physical infrastructure developed and/or implemented by the municipality for the performance of services to provide immediate assistance and protection to children and

adolescents victims of sexual exploitation. The Center provides educational assistance to children and adolescents who are sexually exploited in the streets or by organized networks; specialized multi-professional assistance to the victims of sexual violence and their families; psycho-social support for children and adolescents victims of sexual violence through support groups; permanent follow-up of the cases assisted by the Center within the service network, the family and the community; 24-hour shelter, when necessary; support for the rights-guarantee system through sheltering services and host-family services.

ii. Host family: The Host Family service, which is developed and/or implemented by the municipality, consists of a network of families intended to provide full protection to children and adolescents victims of sexual abuse. The Service ensures them, through a host family, the right to family and community life. It is supported by article 92 of the Statute of the Child and the Adolescent, which establishes the principles and criteria that regulate the sheltering of such children and adolescents. The families that participate in the service are monitored by the technical team of the Reference Centers.

The Reference Center and Host Family services are funded by the Welfare Funds (FNAS), provided that their proposals contain, in addition to an estimate of the funds to be supplied by the Federal Government, the allocation of funds to be supplied by state and municipal governments. The funds can also be provided by different sources, such as the private sector, financing agencies, and society in general.

**Ministry of National Integration**

The National Program for the Generation of Employment and Income in Poor Areas (PRONAGER) is aimed at coordinating several actions and programs capable of improving the conditions of people living in the poor areas of municipalities.

In the year 2000 Brazil ratified Convention 182 of the International Labor Organization on the worst forms of child labor, which cover practices such as child slavery, forced labor, traffic in children, servitude for debt and the condition of slave, prostitution, pornography, and several forms of dangerous and exploiting labor.

Among the objectives of the National Policy for the Elimination of Child Labor are improving household income and promoting integrated sustainable development at local level. To this end, the Secretariat for Welfare of the Ministry of Social Security and Welfare (SEAS/MPAS) has developed structuring actions aimed at the productive organization of families of the children assisted by the Program for the Eradication of Child Labor (PETI), so as to enable their economic and social inclusion and contribute to overcome the families' situation of destitution. It proposes actions by PRONAGER towards the families that participate in the Program for the Eradication of Child Labor (PETI), to which it has committed R$ 13,500,000.00 (thirteen million and five hundred thousand reais) in fiscal year 2000, with a view to reaching, until 2001, some 100,000 families assisted by PETI.

By so doing, the government hopes to eliminate the situation of unemployment and under-employment of the needier communities, foster the eradication of child labor, and contribute to the sustainability of the economic emancipation and social inclusion of the people and the communities assisted by the program, thereby contributing to the reduction of poverty and social inequalities in the areas within the scope of PETI.

**Ministry of Labor and Employment**

The National Plan for Workers' Qualification (PLANFOR) was developed and implemented as of 1995 and has been selected, since 1996, as a priority project of the Federal Government as part of the "Brazil in Action" plan. PLANFOR, which has been included in the set of active policies of the Public Employment System, is funded by the Fund for Workers' Support, along with programs on unemployment insurance, popular credit and assistance to the unemployed. Since its creation, PLANFOR has been implemented not only as a mass training program, but also as a strategy to implement a public policy on Professional Education (EP) integrated with public policies on labor and income.

In Brazil, the topic of equal opportunities and combat of discrimination has been on the public policies agenda since 1965, although only recently, following the implementation of the **National Human Rights Program** by the Ministry of Justice, in 1996, the Brazilian government started to act more decisively in the sense of developing and implementing public polices based on that assumption.

On March 8 1996, the Ministry of Labor and Employment and the Ministry of Justice/National Council of Women's Rights signed the Protocol "Women, Education and Labor", which established the following commitments: participation of a minimum of 30 percent of women in PLANFOR programs; design of programs focused on women heads of households and youths at social risk, especially situations involving violence and sexual exploitation.

The following innovative experiences with a gender perspective focused on sexual violence have been developed in the states:

i. Paraíba – State Secretariat for Justice and Citizenship, Office of the Dean for Community Affairs, at the Federal University of Paraíba: training of Police staff to provide special assistance in cases of violence against women.

ii. Pernambuco – Secretariat for Public Security, Civil Police Academy, Apolônio Sales Educational Development Foundation: training of police officers to combat domestic violence against women and children, as well as sex tourism (adolescents).

iii. Rio Grande do Norte – Municipal Council of Women's Rights, in the city of Natal: pilot-project involving youngsters subjected to sex tourism exploitation, using methodologies that work on self-esteem and the construction of citizenship.

iv. Minas Gerais – Seamstresses' Union of Belo Horizonte and Professor Darcy Ribeiro Institute for Human Social Promotion: program aimed at 2,600 women, including 500 at social exploitation risk, in fashion - design, pattern-making, and sewing – and personal growth, hygiene and health.

v. Between 1995 and 1999, young people in age group 16-24 accounted for about 40 percent of the persons trained by PLANFOR[68] - 2.7 million people, 890,000 of which at social risk – violence, sexual exploitation and critical poverty.

**Ministry of External Relations**

Through its network of embassies and consulates,[69] Brazil has followed the issue of international traffic in human beings and cooperated strongly with national and international agencies in the intent of preventing crimes and, within the scope of its specific responsibilities, providing consular assistance to the victims.[70] In fact, many times the consulates have no knowledge about such crimes, given the fact that, for fear of retaliation, the victims do not formally report them to local authorities.

On the other end of consular action, the Division of Consular Assistance of the Ministry of External Relations has received an increasing number of reports relating to the traffic in human persons from relatives of the victims and agencies such as the Federal Police Department, Public Prosecution Offices, and Associations for Citizen Protection. Upon receipt of the reports, the Division immediately contacts the Consulate corresponding to the local jurisdiction, and requests the adoption of the measures needed to investigate the case, as well as the provision of consular

[68] Data presented in the following publication of the Ministry of Labor and Employment/National Plan for Workers' Qualification: "Diversity & Equal Opportunities: professional qualification in the gender perspective", Brasília, 2000, page 25.
[69] Currently formed by 80 embassies with consular service, 29 general consulates, 7 career consulates, and 13 vice-consulates.
[70] According to the terms of the Vienna Convention on Consular Relations of 1963, providing aid and assistance to nationals is one of the most important consular functions in an overseas country. It is worth recalling that the diplomatic functions are formed by a quadrangle: negotiation, representation, information, and provision of consular assistance. It is based on such understanding that the Ministry of External Relations guided its action regarding the trafficking in human beings. In fact, Brazil is a party to the United Nations Convention for the Elimination of Trafficking in Persons and Pandering concluded in New York in 1950 and ratified by Brazil in 1958.

assistance, including: communication to local police authorities; appointment of an employee especially trained and prepared to monitor the development of the investigation, collect information about the person concerned such as country of origin, personal qualification, and time of arrival in the country; and contact local sheltering and welfare organizations that provide material and psychological support. Then a new contact is established with the Division of Consular Assistance, which adopts the necessary measures related to the return of the Brazilian citizen to Brazil. Throughout 2000 and 2001, the Division received 25 reports of traffic in human beings.

Cooperation among the authorities concerned, i.e., local police and judicial authorities, the Ministry of External Relations and Brazilian authorities was increased in 2001, therefore forecasting an increase in the transnational repression of this hideous crime that affects not only Brazilian women but their families as well.

**Ministry of Justice**

**National Council on Women's Rights (CNDM)**

CNDM has the mission of promoting policies at national level, to eliminate discrimination against women by ensuring them freedom and equal rights, as well as full participation in the country's political, economic and cultural activities. It is directly linked to the State Secretariat for Human Rights of the Ministry of Justice, and is responsible for proposing legal changes to ensure compliance with the Federal Constitution, as well as the revision of the Civil and Penal Codes, in order to eliminate discriminatory aspects. For example, the suggestions submitted to the Ministry of Justice Committee in charge of proposing the Bill on the Revision of the Brazilian Penal Code.

CNDM keeps in permanent contact with the Courts of Justice, for the purpose of defending the rights of women, in partnership with universities, women's institutions at state, municipal and Federal District level, as well as non-governmental organizations engaged in the promotion and dissemination of rights, as well as events of interest to women.

In order to implement the commitments undertaken by the Brazilian government at the IV World Conference on Women of Beijing, the National Council on Women's Rights/Ministry of Justice developed a document entitled *"Strategies for Equality"*, following a comprehensive process of consultation with the civil society and the State. This document proposes as priority areas to ensure equal rights and opportunities to women: Elimination of Poverty; Health; Education; Prevention and Elimination of Violence; Institutional Mechanisms; Women and Human Rights; and Communication Media.

The National Council on Women's Rights developed the National Program for the Prevention and Elimination of Violence, which is focused on four basic approaches: coordination of inter-ministerial actions; revision of law; strengthening of the legal-police apparatus, campaigns for public opinion awareness. It has also implemented the following actions:

i. Revision of Law: by the Council's initiative, a Bill of the Executive Branch (Bill nº 1.609/96) was submitted to the National Congress changing the Penal Code by removing the so-called "Crimes Against Sexual Freedom" (rape, violent indecent assault, sexual possession by deceit, indecent assault by deceit) from the Title "Crimes against Custom" and moving them to the Title "Crimes against the Person";

ii. Protection to women victims of domestic violence in Centers for Integrated Assistance. On this issue, the Council prepared in 1997 a document entitled "Term of Reference for the Creation and Implementation of Shelters". It enabled nine agreements to be signed by the Ministry of Justice/National Secretariat for Human Rights, states, municipalities, and the Federal District, for the construction and upkeep of Shelters and the monitoring of its effective performance, at the estimated cost of R$ 407,000.00 (four hundred and seven thousand reais) in 1998; 12 agreements totaling R$ 644,000.00 (six hundred and forty-four thousand) in 1999; and 19 agreements totaling 800,000.00 (eight hundred thousand) in 2000;

iii. Participation in the High Level Committee established by the Ministry of Justice to propose a Bill on revision of the Special Section of the Penal Code, contributing decisively to maintaining the punishment for rape (six to ten years in prison) and to the classification of sexual harassment as a crime. The final text of the Bill on the Penal Code, which was submitted to the Ministry of Justice on 8 April 1999, classifies sexual harassment as a crime and guarantees that the punishment for rape is sustained;

iv. Strengthening of the Special Police Departments for Assistance to Women (DEAMs) established in 1985 in fulfillment of one of the most important policies to combat violence against women. Today, there are 307 units throughout the national territory. Nevertheless, states such as Acre, Alagoas, Roraima, Ceará and the Federal District have only one single such Police Department, whereas São Paulo concentrates 40.7 percent of the country's overall number of DEAMs, followed by the state of Minas Gerais, with 13 percent;[71]

v. CNDM, in partnership with the State Secretariat for Human Rights/Ministry of Justice, established a Technical Committee for the purpose of promulgating specific legislation to combat intra-family violence. Executive Ruling nº 97, of 9 March 1999.

Based on studies performed on the PPA 2000-2003, on the projects included in the Governmental Agenda for the 2001/2002 period, and on the proposal of the 2002 Law of Budget Guidelines (LDO), the National Council on Women's Right developed a number of actions in the field of Human Rights aimed at combating violence against women, among which are:

i. Ensuring, at state and municipal level, the development of programs for prevention and assistance in cases of violence in urban and rural areas, with emphasis on family violence, violence against girls and children, and drug addiction.

ii. Ensuring resources from the National Public Security Fund to re-equip, qualify and automate the Police Departments of Assistance to Women (DEAMs), as well as to establish more of such Police Departments.

iii. Ensuring, in all Police Departments of Assistance to Women, privacy and fair treatment in the assistance to women victims of violence.

iv. Establishing integrated networks of assistance to women in situation of violence in rural and urban areas, through multidisciplinary action aimed at families, victims, and aggressors.

v. Ensuring the establishment and operation of Shelters and Safe Houses to shelter women and youngsters at risk.

Since the 1980s, the establishment of shelters and the creation of police departments of assistance to women have allowed sexual violence to become more visible and more frequently investigated. However, both the police stations and shelters face serious difficulties as a result of the unstable support they receive from the government. The distribution of these entities throughout the country is highly uneven, and this fact is aggravated by the lack of a staff especially trained to deal with the issue of sexual violence.

**Department of the Child and the Adolescent (DCA)**

The Department of the Child and the Adolescent, established in the end of 1995 within the then Secretariat for Citizenship Rights[72] in the Ministry of Justice, acted in the sense of interceding in the area of sexual abuse and sexual exploitation of children, for the purpose of identifying aggressors and providing legal-social protection to the victims. By so doing, it was fulfilling its institutional mission of implementing the national policy on human rights and promoting and defending the rights of children and adolescents. This was done in addition to other social, health, education, labor and welfare areas, which have their own programs to prevent and combat this form of violence.

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[71] Data included in the Final report of the National Survey on the Working Conditions of the Police Departments of Assistance to Women, of the SEDH/Executive Secretary of the CNDM, Brasília, 2002, page 1.
[72] Currently the State Secretariat for Human Rights.

At legislative level, along the line of legal-social protection, which involves the systems for guarantee of rights, the Ministry of Justice, fulfilling the commitments undertaken in the National Human Rights Program, launched the process to change certain provisions of the Penal Code, in order to define more severe punishment for abusive and violent conduct, or the sexual exploitation of children and adolescents. As an example, penal actions are no longer of a private character, but rather of public nature. This change is an important achievement for the prevention of sexual abuse and exploitation of children and adolescents."[73]

Throughout 1996 the National Council for the Rights of Children and Adolescents (CONANDA) promoted a broad social mobilization at municipal, state and federal level, to assess the situation regarding implementation of the rights of children and adolescents as top priority, especially with regard to the following themes: child labor, and violence and sexual exploitation of children and adolescents. The effort led to the II National Conference on the Rights of Children and Adolescents – Top Priority: Children and Adolescents, which was held in 1997.

Since 1996 the DCA has accorded priority in its plans of action, to policy strategies that guarantee rights, specifically the legal and social protection of children and adolescents victims of sexual abuse and exploitation. Among these strategies are: a) the strengthening of social entities for legal-social protection, Guardianship Councils, centers of operational support at public prosecutors' offices for childhood and adolescence, courts of law, police departments for the protection of children and adolescents, and others, all in fulfillment of their institutional obligations; b) the training of public governmental and community agents engaged in the promotion and defense of the rights of children and adolescents victims of exploitation, and identification of exploiters.

1. *Main strategic actions developed by the DCA at national level:*

i. In 1996: Development and implementation of Guardianship Councils.

ii. In 1996: Funding of projects and programs for the fight, by NGOs, of the exploitation and sexual abuse of children and adolescents in the fields of prevention and defense.

iii. In 1996: Support for the launching of the Nationwide Campaign to Combat the Sexual Exploitation of Children and Adolescents, in partnership with the Brazilian Multi-professional Association of Protection to Childhood and Adolescence, and support for the campaigns promoted in different Brazilian states.

iv. In 1996 and 1997: Implementation of the "national network" of legal-social protection of victimized children and adolescents, the CHILD ADVOCATE Project, developed by the National Association of Defense Centers (ANCD), which involves 35 defense entities, particularly Centers for the Defense of Children and Adolescents.

v. In 1996, 1997 and 1998: Development and implementation of the Information System on Childhood and Adolescence (SIPIA). This System, in its 1st module, consists in the monitoring of violations of the fundamental rights of children and adolescents, and in the restoration of these rights through programs and services.

vi. In 1997 and 1998: Nationwide Campaign to Combat Commercial Sexual Exploitation and implementation of a Program to Receive Reports, in partnership with the Brazilian Multi-professional Association of Protection of Childhood and Adolescence (ABRAPIA).

2. *Programs and plans developed by DCA included in the "Avança Brasil" Program –2000-2003 Multi-annual Plan:*

i. Qualification of the System of Guarantee to the Rights of Children and Adolescents: training of human resources to act in the field of guarantee to rights of children and adolescents – Councils of Rights and Guardianship; police officers and technical staff of Special Police Departments, public defenders and technical staff, public prosecutors and technical staff of the Public Prosecutor's Offices for Childhood and Adolescence, judges and technical staff of Childhood and Youth Courts, as well as professionals of the Defense Centers. Estimated budget: R$ 394,202.00.

[73] Presentation by Dr. Alayde Sant'Anna, Director of DCA, on the theme: Combat Measures, in the panel: Sexual Violence and Exploitation of Children and Adolescents, in the Annals of the II CONANDA Conference.

In 2000: the DCA (Department of the Child and Adolescent) sponsored the training of judges and public prosecutors from Childhood and Youth Courts, in the field of guarantee of the rights assured by the Statute of the Child and the Adolescent. The proposal involved Meetings for Justice in Education, and the allocation to courts and social organizations of assistance, of the Guarantee System contained in the Statute of the Child and the Adolescent, and its liability mechanisms.

ii. Studies and applied research in the field of promotion and defense of the rights of children and adolescents: among the planned strategies, the DCA funds studies and research on sexual violence. In partnership with the Brazilian Institute of Innovations on Behalf of a Healthy Society (IBISS), it is putting together a Research on the Traffic in Women, Children and Adolescents for the Purpose of Sexual Exploitation in Brazil, coordinated by the Center of Reference, Studies and Actions on Children and Adolescents (CECRIA). This is being done in reply to a requirement of the Organization of American States (OAS), through the Inter-American Women's Committee and the Inter-American Children's Institute, which support the International Institute of the De Paul College in a pilot research project to study the traffic in women, children and adolescents for the purpose of sexual exploitation in Latin American and Caribbean countries. Budget: R$ 144,998.38.

iii. Implementation of the Integrated Information System on Childhood and Adolescence (SIPIA) at national level, with a view to ensuring actual and reliable data to serve as an input for the adoption of policies at the three levels. Budget: R$ 959,200.00.

iv. Institutional restructuring, as provide for in the Statute of the Child and the Adolescent: implementation of units on rights of children and adolescents of the Defense/Liability axle. This is aimed at supporting projects to implement Centers of Public Prosecution Services Specialized in Children and Adolescents. According to article 141, every child and adolescent has guaranteed access to a public defender, to the Public Prosecution Service and to the Judicial Branch, through any of its bodies. The implementation of 13 units of the Special Center of Assistance to Children and Adolescents in Public Prosecution Services was negotiated in 2001, to provide legal assistance in the defense of the interests of children and adolescents, to operate within the Childhood and Youth Courts in the states of Acre, Amapá, Espírito Santo, Maranhão, Mato Grosso do Sul, Minas Gerais, Paraíba, Paraná, Pernambuco, Rio de Janeiro, Rio Grande do Sul, Sergipe and Tocantins. Budget: R$ 1,091,000.00.

v. Implementation of a network to identify and locate missing children and adolescents. Budget: R$ 255,000.00.

vi. Programs and plans developed by the DCA included in the National Public Security Plan:

i. Training of human resources to work in the field of guarantee of rights of children and adolescents, involving: a) workshops with the staff of the Police Departments Specialized in the Investigation of Crimes against Children and Adolescents; b) assessment and diagnosis of violations of the rights of children and adolescents – physical, psychological and sexual violence. Budget: R$ 492,500.00.

ii. Establishment of Police Departments Specialized in the Investigation of Crimes against Children and Adolescents, including: a) institutional restructuring; b) support for the strengthening of Police Departments, with a view to implementing the operation of the system of Notification of Reports on Crimes against Children and Adolescents, in partnership with the governments of the states of Amapá, Bahia, Ceará, Distrito Federal, Espírito Santo, Maranhão, Mato Grosso do Sul, Pará, Pernambuco, Rio de Janeiro, Rio Grande do Norte, Rio Grande do Sul, Rondônia, and Santa Catarina. It is suggested to these Police Stations the implementation of the Service of Investigation of Missing Children. Budget: R$ 1,000,000.00

*3. Technical Cooperation Agreements with International Organizations:*

i. UNESCO – United Nations Educational, Scientific and Cultural Organization: aimed at improving and expanding the System of Information on Childhood and Adolescence (SIPIA).

ii. UNIFEM – United Nations Development Fund for Women: develops a project entitled Promotion of the Rights of Young Women in Brazil Vulnerable to Sexual Abuse and Commercial Sexual Exploitation. This project has been defined in the context of the Campaign on Violence Against Women carried out in Latin America and the Caribbean. This United Nations inter-agency initiative coordinated by UNIFEM, is supported by initiatives of women's movements in the region and linked to the global human rights campaign. Its implementation was started in 1999; among the proposed activities are:

- The production of knowledge about sexual violence against girls and young women through surveys, studies, research, projects/programs, campaigns about the theme, and records on natural persons and legal entities.
- Workshops with youngsters (in Brasília-DF, São Vicente-SP, Foz de Iguaçu-PR, Vitória-ES, Belo Horizonte-MG, Maceió-AL, Recife-PE). The use of specific techniques favored creative and life experience manifestations, leading to a better understanding of causes, dimensions, features, and consequences of sexual exploitation and sexual abuse from the perspective of young girls, who are victims of sexual abuse and sexual commercial exploitation.
- Course/training, pilot experience developed in Brasília for professionals (social workers, psychologists) aimed at offering special assistance in the assessment of sexual abuses of children and adolescents. 26 professionals have been trained in ten states of the Federation.
- Partnership with the Center of Assistance to Cases of Violence, with the aim of providing assistance to cases of violence. It acts at the preventive level (presentations to professionals and to the community in general) in the state of Rio de Janeiro and other Brazilian states. At medical level, in the municipality of Rio de Janeiro it provides psychotherapic care to children and adolescents victims of sexual violence as well as to the aggressors, in addition to the social monitoring of families. It currently offers a training course to undergraduate and graduate students, as well as to study and inspection groups, and develops research on the theme.
- Analysis of the strategies used by governmental agencies in the assistance, prevention, defense and identification of those responsible for sexually abusing children and adolescents, with a view to facing up to situations involving the sexual abuse of children and adolescents, focused on the stages of disclosure, reporting, investigation, and restoration of rights in five states corresponding to the five Brazilian geographic regions – "Circuit and Short-Circuit" Survey on the Assistance, Prevention, Defense and Identification of those Responsible for Sexual Abuse against Children and Adolescents.

4. *National Plan to Combat Sexual Violence against Children and Adolescents:*

This Plan provides a number of organized actions aimed at technical-political and financial intervention to combat sexual violence against children and adolescents. The Plan was approved in 2000, during an assembly of the National Council for the Rights of Children and Adolescents (CONANDA), and comprises national guidelines within the scope of the policies aimed at combating sexual violence against children and adolescents. It is therefore a legitimate document that serves as a reference for policy-making at federal, state and municipal level.

i. Establishment of an Executive Secretariat to decentralize at state level, implementation of the National Plan to Combat Sexual Violence against Children and Adolescents. Budget: R$ 66,960.00.

ii. Action defined in the multi-annual plan: National Information Network for the Prevention and Elimination of Sexual Exploitation and Abuse of Children and Adolescents (Program: Elimination of Sexual Exploitation and Abuse of Children and Adolescents). Strategy: to decentralize the national network through the organization of databases in the various regions in the country, using existing databases, previous experience and technology, but adjusting them to the new demands. Budget: R$ 140,000.00.

iii. Action not defined in the multi-annual plan: Implementation of the National System to Receive, Treat, Track, Monitor and Evaluate Reports of Sexual Exploitation of Children and Adolescents. a) support the Report

Notification System – by telephone service (dial 0800-990500) and by means of a permanent campaign, intended to make the population aware of the issue, mobilizing defense/liability agencies in the treatment of reports, to protect children and adolescents and identify the aggressor; b) monitor the report and its flow through the System of Guarantee of the Rights of Children and Adolescents.

**Judicial Measures**

With regard to the protection of rights, article 5, subparagraph XXXV of the Federal Constitution ensures every person access to the Judiciary. As regards the institutions – the Judiciary, the Public Prosecution Service, the Public Defense Service, and the Public Security Service – they all have, among their responsibilities, that of promoting and guaranteeing the protection of women, children and adolescents, victims of sexual violence.

In the implementation of the Statute of the Child and the Adolescent, public spaces and legal mechanisms make up the *System of Guarantee to the Rights of the Child and the Adolescent*, which comprises three focal areas: promotion, social control, defense and liability. The defense and liability area[74] is made up of public spaces and legal-institutional mechanisms that: a) provide legal protection to children and adolescents whose rights have been violated or threatened; and b) hold violators legally liable for their acts. This area involves the Public Defense Service, Defense Centers, and Guardianship Councils,[75] among others, which are aimed at ensuring, by means of socio-legal defense means, the rights of children and adolescents. Other agents involved include the Judiciary, the Public Prosecution Service, and Public Security. The only institution authorized to perform official medical examinations in victims of sexual violence is the Coroner's Office (IML), with facilities generally located in the urban area – capital cities – and which suffers from lack of equipment and personnel, especially coroners. Personnel specialized in crimes of sexual abuse are rarely found in an IML. Nevertheless, there is a mobilization of feminist militants and women in the area of Human Rights that proposes a reform of the medical jurisprudence system and the creation of more humane spaces with specialized technical personnel.

With regard to the protection and guarantee of the rights of children and adolescents, the system of rights has the following structure:[76]

i. Police Department of Protection to the Child and the Adolescent – Responsible for dealing with all the complaints and reports of violence against children and adolescents. Once the police inquest is filed, the crime is investigated by special agents who investigate, hear the parties, and collect evidence for the trial, under the leadership of a commissioner. If the commissioner concludes that the defendant is guilty, he/she is indicted and the case is submitted to a court of law. For the protection of the victims of sexual violence, psychologists and social workers have been trained to provide special assistance and evaluate cases of sexual abuse of children and adolescents, within the scope of the UNIFEM/MJ/SEDH/DCA Project.

ii. Public Prosecution Service – The Coordinating Body for Childhood and Adolescence is the agency of the Public Prosecution Service in charge of promoting criminal actions aimed at investigating and judging violators who have committed sexual crimes against children and adolescents. The criminal action may be conditioned to the representation of the party, but the Prosecution Service may promote the criminal action unconditionally, in which case the party is not required to represent.

iii. Special Criminal Courts – Criminal Courts specialized in Curbing Crimes against Children and Adolescents, they are responsible for investigating crimes, including sexual violence against children and adolescents. These Courts have been established with the intent of speeding up the trial of these crimes and reducing the level of impunity. Special Criminal Courts provide special assistance to both the aggressor and the victim with a multi-professional team, in order to protect the victim and expedite the development of the proceedings. Currently, there are

[74] NOGUEIRA NETO, System of Guarantee of Rights – The Role of the Defense Centers, CENDHEC, Recife.
[75] According to a survey carried out by the DCA, in 1999 there were 1,502 Guardianship Councils and 2,273 Municipal Councils of Rights in Brazil.
[76] As presented by CEDECA/BA at www.violenciasexual.org.br .

Criminal Courts specialized in Curbing Crimes against Children and Adolescents operating only in the states of Bahia, Ceará and Pernambuco.

iv. Public Defense Service – One of the institutional roles of the Public Defense Services is to legally defend children and adolescents. The Statute of the Child and the Adolescent establishes, in its article 141, that every child or adolescent shall be ensured access to Public Defense Services. Today there are Special Centers of Assistance to Children and Adolescents in the Public Defense Services in the states of Acre, Amapá, Maranhão, Mato Grosso do Sul, Minas Gerais, Paraná, Pernambuco, Rio de Janeiro, Rio Grande do Sul, Sergipe and Tocantins.

**Factors and Difficulties**

The exploitation of prostitution and the trafficking in women has increased in all urban centers in Brazil, taking peculiar and diversified forms according to the social, economic and cultural reality of each region.

Since childhood, many women are victims of different forms of violence, which constitute perverse violations of their rights. Throughout the national territory, girls and adolescents are submitted, everyday, to diverse forms of sexual exploitation and traffic.[77]

As a result of the high number of increasingly younger girls who live on the "exchange of sexual favors for material or social advantages", the term "sexual exploitation" is used in lieu of exploitation of prostitution, so as to prevent any form of discrimination, especially in view of the fact that these girls are undergoing their biological, psychological, social, and cultural development. According to documents of the National Campaign (1997), the term prostitution conceals the nature of the abused sexual behavior, diverting the focus and conveying an idea of informed consent, which characterizes the girls and adolescents as violators instead of victims.[78]

The Action Agenda agreed upon in the Stockholm Congress (1996) defines as commercial sexual exploitation of children and adolescents, any type of activities in which networks, users, and individuals use the body (sex) of a girl or adolescent to their sexual advantage, based on a relation of commercial exploitation and power, and establishes that the commercial sexual exploitation of children and adolescents is a crime against humanity.

In this context, the sexual exploitation characterized by trade relations through body trading (sex) also includes sex tourism, traffic and pornography. Although illegal and punishable by Brazilian legislation, these practices are disseminated throughout the country and organized into networks, thereby leading to impunity, in addition to encouraging the production and consumption of pornographic material (exchange and sale of pornographic material, such as magazines, photographs, films, videos, and sites on the Internet), as well as the expansion of national and transnational crimes.

The girls themselves make little money with the sexual exploitation, are frequently indebted, pay a percentage to the exploiter for maintaining the "point" and, since most of the times the supplies are provided by the very persons involved in the commercial sexual exploitation network, the cycle is hard to break and the girls are tied to the criminal network.

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[77] In this document the Word "Traffic" means recruiting, transporting, transferring, housing, or sheltering people by resorting to threat, force, or other forms or coercion, abduction, fraud, deceit, abuse of authority, situation of vulnerability, making or receiving payment or benefits to obtain the consent of a person who has authority over the other, for the purpose of exploitation, according to the Additional Protocol Against Transnational Organized Crime to Prevent, Curb, and Punish the Trafficking in Persons, especially Women and Children (UN 2000).

[78] National Campaign for the Elimination of the Exploitation of, Violence against, and Sex Tourism of Children and Adolescents – Executive Secretariat: Casa Renascer, Natal/Rio Grande do Norte, 1997.

The forms of sexual exploitation of children and adolescents are related to economic activities, which, in turn, characterize the establishment of the commercial sexual exploitation networks in the various regions of the country, including travel agencies, hotels, nightclubs and bars, modeling agencies, cab drivers, truck drivers and police officers, among others.

Some of these forms of sexual exploitation in Brazil can be identified on the data presented in the Study Report coordinated by FALEIROS AND COSTA[79] for the Ministry of Justice in 1997, as well as on the characteristics pointed out by LEAL,[80] which have made sexual exploitation and its gravity more visible in all regions of the country. Both studies have enabled the following systematization of data:

[79] Fundaments and Policies against the Exploitation and Sexual Abuse of Children and Adolescents – Study Report, Ministry of Justice/CECRIA,1997.

[80] LEAL, Mª Lúcia, Commercial Sexual Exploitation of Boys, Girls and Adolescents in Latin America and the Caribbean (Final Report -Brazil), 1999, Brasilia.

| REGION | FORMS OF SEXUAL EXPLOITATION |
|---|---|
| North | Exploitation of children and adolescents in bawdyhouses and mines, in barbarian forms such as: private incarceration, (on farms and in mines), sale, traffic, auctions of virgins, mutilation, disappearance, and even murder. At river ports the exploitation is aimed, mainly, at the crew of cargo ships. |
| Northeast | Sex tourism and pornography prevail in the coastal cities with intense tourist activity, such as the capitals of Northeastern states. The activity is primarily commercial and organized within a network of enticement, which includes national and foreign travel agencies, hotels, pornography trade, cab drivers and others.<br><br>The sexual exploitation involves mostly adolescent, poor, black or mulatto girls. It includes traffic to foreign countries. At the seaports, it is mainly aimed at the crew of cargo ships. |
| Southeast | In this region, sexual exploitation is focused on street children and adolescents, who run away from home in order to escape the physical or sexual violence, as well as the situation of extreme poverty to which they are exposed. These children and adolescents survive in the streets using their body (sex) as merchandise to get their support. It also occurs in bawdyhouses. At seaports, it is primarily aimed at ship crews. |
| Central-West | This region is marked by the so-called "nautical tourism" in municipalities along navigable rivers, on the national and international borders and in ports. This practice is aimed at the trade in child and adolescent sex and is now being aimed at tourists. However, local residents are the main consumers of child and adolescent prostitution in the riverside regions. Cases of sexual exploitation of Indigenous girls and adolescents have been reported in the region. |
| South | In this region, sexual exploitation is focused on street children and adolescents, mostly female adolescents. It is found in all large urban centers, as well as in mid-sized towns. Cases of sexual exploitation of Indigenous girls and adolescents have been reported in this region. |

The most common forms of enticement for the purpose of sexual exploitation and traffic are false job offers, promises of a better life (school, knowledge of a foreign language, salary, etc), and marriage. Intra-family and extra-family violence is also a factor of vulnerability that favor the attraction of children and adolescents to commercial sexual exploitation and traffic networks. This situation of violence is found throughout the country, both in rural and urban areas, and at all socio-economic levels.

Sexual exploitation, however, prevails among poor child- and adolescent-girls in age group 14 to 17 years. Poverty, in its most varied expressions, interferes directly in the situation by favoring "life in the streets and the route of prostitution, sex tourism, exploitation by networks, bawdy houses, and hotels."[81]

In the Brazilian legal system, "all these players are equally liable, for omission and non-guarantee or violation of the rights of childhood and adolescence."[82] The number of existing agencies in the states is still low, their

[81] Fundaments and Policies against the Sexual Exploitation and Abuse of Children and Adolescents – Study Report, Ministry of Justice/CECRIA, 1997.

[82] GARCIA, Margarita Bosch. The Role of the Defense Centers in the System of Guarantee of Rights, Recife, 1999, p. 209.

performance poor and the integration among them insufficient. All these factors contribute to an innocuous protection of children and adolescents victims of sexual abuse and exploitation. Ela Wiecko, upon assessing the two actions defined by the Stockholm Congress, explained how they are being implemented in Brazil: "...from the standpoint of the penal system, which is defined as the set of institutions, strategies, and social sanctions aimed at promoting and ensuring an individual's compliance with the rules of conduct protected by criminal laws, the Brazilian State, upon signing the declaration and accepting the agenda regarding the action voted during the Stockholm Congress, agreed to promote the following actions, among others: first, to consider as a crime the sexual and commercial exploitation of children, as well as to punish all the agents involved, whether nationals or foreigners and, at the same time, to ensure that the victims of such practice are not punished. As for the first action, the protection of children and adolescents victims of sexual abuse and exploitation is insufficient in Brazil. First of all, in the primary accusation of the agents – and by primary accusation we mean the legislative provision regarding conducts defined as crimes, i.e., what is provided for in the law as a crime, or not. (...) There is a set of penal types that are being appropriately criticized. In the juridical-penal system, enticement is considered as a material crime. According to this classification, it is necessary to prove that the adolescent has become, as a result of the agent's action, morally depraved, corrupt. Therefore, the proceedings involve a discussion about the behavior of children and adolescents, which is filled with prejudices and marked by the total lack of knowledge about the reality. Vis-à-vis these imperfections of the law, many perpetrators of sexual abuse have bee acquitted, whereas the victims have been morally judged and convicted, without the right to defense."[83]

Sexual violence against women perpetrated through conducts typified in the Penal Code as rape (Art. 213), violent indecent assault (Art. 214), indecent assault through deceit (Art. 216), seduction (Art. 217), enticement (Art. 218), and abduction (Art. 219), among others, which hurt sexual freedom and are classified as sexual crimes against customs and not against the person, cannot have the same meaning it had in 1940, when the Penal Code was issued. Thus the role of the Brazilian jurisprudence, i.e., to correct the provisions of the Code that have become totally outdated and obsolete.

Sexual exploitation and traffic for the purpose of sexual exploitation are defined as crimes in the Penal Code. The judicial measures are primarily aimed at curbing the crime and punishing the exploiter/trafficker and neglect the protection and assistance to the victim.

The traffic network, which is formed by enticers, transporters, exploiters, other intermediaries, and customers demands an answer from the State, through the establishment of juridical protection measures and measures to ensure appropriate protection, support and assistance to victims, as well as to punish the violators that make up the traffic network. In the area of protection of women's rights, there is nothing like the system proposed for children and adolescents, as defined in the System of Guarantee of the Rights of Children and Adolescents. NGOs and social organizations, judicial authorities, the police and immigration services, as well as similar existing services are not yet sufficiently mobilized and prepared to adopt a global and multi-disciplinary approach aimed at preventing and eliminating traffic.

[83] Paper on "Protective Measures", by Ela Wiecko, in the panel: Sexual Violence against and Exploitation of Children and Adolescents, in the Annals of the II CONANDA Conference.

*Article 7*

***States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:***

***(a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;***

***(b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;***

***(c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.***

**Legislative Measures**

**Federal Constitution**

Article 3 establishes and defines as fundamental objectives of the Republic, among others, the promotion of the well being of all, without any prejudice by reason of origin, race, sex, color, age or any other form of discrimination.

Article 5, in turn, establishes that *"all persons are equal before the law, without any distinction whatsoever"* and that *"men and women have equal rights and duties"*.

Upon providing for political rights, article 14 establishes that *"the sovereignty of the people shall be exercised by universal suffrage and by the direct and secret ballot, with equal value for all"*.

According to article 5, subparagraph I of the Brazilian Constitution, *men and women have equal rights and duties*. Article 14, § 3º, of the same legal instrument, establishes as conditions for eligibility: Brazilian nationality; the full exercise of political rights; electoral enrollment/qualification; electoral domicile in the respective district; membership in a political party; and the minimum age (as duly stipulated) for those specific offices. There is, therefore, no normative obstacle in the Brazilian Constitution that could prevent the access of women to elective offices.

**Federal Legislation**

Brazilian federal legislation has only recently advanced in the sense of adopting concrete measures to expand women's opportunities for political participation. It is worth mentioning, for example, implementation of the quota policy regarding women's candidacy, provide for by Law 9,100 of 2 October 1995, that established the rules for the municipal elections of 3 October 1996, in which article 11, § 3, established a minimum of 20 percent for women's candidacy. It is also worth emphasizing that this measure was re-issued in 1997 by Law 9,504, which defined rules for the elections and, in its article 10, § 3º, establishes that *"of the overall number of vacancies resulting from the rules set out in this article, a minimum of thirty percent and a maximum of seventy percent shall be reserved for candidates of each sex"*.[84] Laws issued in 1997 were also careful to the point of establishing as mandatory the reference to gender in the registration forms of candidates, so as to ensure compliance with the quota policy.[85]

[84] Article 80 of the Transitory Provisions establishes that in the elections to be held in 1998, each political party or coalition shall reserve, to candidates of each sex, a minimum of 25 percent and a maximum of 75 percent of the overall number of registered candidacies.

[85] Art. 16. Up to 45 days before election day, the Regional Electoral Courts shall submit to the Supreme Electoral Court, for the purpose of data centralization and dissemination, the list of candidates to the majority and proportional elections, which shall compulsorily include reference to gender and to the office they are running for.

The efforts of the Female Delegation in the National Congress, which gathers women deputies and senators, working in partnership with Councils for Women's Rights and various organizations of the women's movement, were fundamental to the approval of these laws.

**Table 15 – Evolution of Women's Participation in the Chamber of Deputies**

**Brazil - 1932-1998**

| Year | Candidates | Elected | | Year | Candidates | Elected |
|---|---|---|---|---|---|---|
| 1932 | 1 | 1 | | 1970 | 4 | 1 |
| 1935 | – | 2 | | 1974 | 4 | 1 |
| 1946 | 18 | 0 | | 1978 | – | 4 |
| 1950 | 9 | 1 | | 1982 | 58 | 8 |
| 1954 | 13 | 3 | | 1986 | 166 | 26 |
| 1958 | 8 | 2 | | 1990 | – | 29 |
| 1962 | 9 | 2 | | 1994 | 189 | 32 |
| 1965 | 13 | 6 | | 1998 | 352 | 29 |

Source: Supreme Electoral Court, December 2000.

**State Constitutions**

Some State Constitutions, such as those of Ceará, Maranhão, Pará, Paraná and the Organic Law of the Federal District, upon establishing State Councils of Women refer specifically to women's participation in the development and implementation of governmental policies.

An example of that is the Constitution of the State of Ceará, which establishes that, "*The Council of Women's Rights of Ceará, an agency aimed at proposing measures and actions that ensure the enjoyment of rights by women and their participation in the social, political, economic, and cultural development of the State, shall be compulsorily consulted, on a priority basis, upon the design of public policies involving women, at all levels of the State administration. The Council of Women's Rights of Ceará shall have financial and administrative autonomy.*"

The Constitution of the State of Bahia defines specific measures regarding human reproduction, provides for the inspection by the government and representative entities, in the assessment of surveys performed in the field of human reproduction, as well as for the setting up of a state-level interdisciplinary commission, ensuring representation of the autonomous women's movement. In the same regard, the Constitution of the State of Rio de Janeiro establishes in its article 36 that, "*In compliance with the fundamental principle of dignity of the person, the law shall establish that the Single Health System shall regulate genetic research and research on human reproduction to be assessed, in each case, by an interdisciplinary state-level commission*". The sole paragraph of the same provision establishes that "*a member of the autonomous women's movement and of the State Council of Women's Rights shall participate in the commission*". The Constitution of the State of Tocantins provides for the participation of representative groups of women in the design, control and implementation of governmental programs for full assistance to women's health.

**State Legislation**

Up to now, the state of Rio Grande do Sul, through Law nº 11.303/99, was the only state in the Federation to establish *"minimum and maximum percentages (30 % e 70%) of men and women in the offices of collegiate bodies in the state administration"*. A Bill establishing minimum and maximum percentages of 30% and 70% for each sex in managerial positions linked to the state administration is currently under discussion in the state of Paraíba.

**Table 16 – Presence of Women in State Legislatures**

**Brazil - 1946-1998**

| Year | Candidates | Elected | | Year | Candidates | Elected |
|---|---|---|---|---|---|---|
| 1946 | 8 | 5 | | 1974 | 15 | 11 |
| 1950 | 10 | 8 | | 1978 | - | 20 |
| 1954 | 16 | 7 | | 1982 | 132 | 28 |
| 1958 | 39 | 2 | | 1986 | 385 | 31 |
| 1962 | 92 | 11 | | 1990 | - | 58 |
| 1965 | 39 | 11 | | 1994 | 613 | - |
| 1970 | 38 | 8 | | 1998 | 1388 | 107 |

Source: Supreme Electoral Court.

**Municipal Legislation**

In general, not much information is available on actions of the Legislative Branches in the 5,560 Brazilian municipalities. When it comes to this information based on gender and race/ethnicity, data are even scarcer.

According to Lúcia Avelar, a survey carried out by the Brazilian Institute of Municipal Administration (IBAM) in 1997 indicated that in the municipal Legislative Branches, the number of councilwomen elected increased from 3,952 in 1992 to 6,436 in 1996. This increase varied according to region. The increase was greater in the Central Western region - which used to display the lowest number – where the number of councilwomen jumped from 157 to 555. The Southern region had a significant increase: from 537 in 1992 to 1,096 in 1996 (104.1 percent). The Northern and Southeastern regions, where meaningful numbers had been recorded in previous years, displayed increases of about 50 percent. The overall participation of women in municipal Legislative Bodies increased from 7.4 percent in 1992 to 11.0 percent in 1996.

In the 2000 elections, out of the 70,321 women who ran for Municipal Councils, 7,000 were elected. Male candidates totaled 296,902, with 53.257 winners. The Northeastern region has the highest number of Councilwomen – 36.7 percent, followed by the South, with 27.9 percent. Southern states elected 17.8 percent of the candidates and the Northern and Central-Western regions elected 8.9 percent and 8.7 percent, respectively.

The discussion about affirmative actions, more specifically about the quota system, gained greater dimensions with the approval of laws establishing percentages by gender in proportional elections in the Brazilian Legislative Branch. Up until then, the adoption of provisions regarding percentages to occupy positions in management had been part of the statutes and internal regulations of a few political parties and labor unions. Now, the discussion about

implementation of affirmative measures within the Executive and the Judiciary, more specifically through the quota mechanism, also occurs in the sense of expanding this policy to the racial issue.

It is important to pay attention to two issues, regarding the legislative area: 1) It is difficult to obtain past data and information on the participation of women in politics, since the reference to gender in the candidate's registration form only became mandatory in 1997; 2) there is a large number of legislative bills under examination in the National Congress, proposing the adoption of the quota system, as well as other affirmative actions, at different decision-making levels in the Legislative, Judicial and Executive Branches.

At present there are 18 legislative bills pending analysis in the National Congress suggesting the quota system, alternation between genders, or other legislative affirmative action measures that can contribute to increase the number of women in managerial positions or offices, or to give greater visibility to the women who hold such offices and positions. Some states have started some initiatives in this regard, such as for example the 1999 bill amending the internal regulations of the State Council of Pará, to include the titles "Mr. Deputy" or "Madam Deputy", or " Your Excellency"; the bill is currently under examination in the State Legislature.

An important discussion now under way in the field of election reform has to do with the adoption of the list system in the elections; this, together with the idea of alternation between genders in the composition of the lists, could ensure greater effectiveness in the election of women and in the achievement of balance between genders.

**Governmental Actions**

By signing the National Human Rights Program (PNDH), the Brazilian government undertook to support programs in the fields of information, education and training on human rights, for professionals in law, police officers, prison warders and unions, associations and community leaders, in the intent of increasing the ability to protect and promote human rights in the Brazilian population; to lead such programs in the recognition of the modern concept of human rights, according to which respect for equality also includes acceptance of differences and peculiarities in each individual. It also undertook to support the proportional representation of minority groups and communities within an ethnical, racial and gender perspective in the publicity and in media campaigns implemented by governmental agencies; and to encourage campaigns to inform society about the candidates to public offices and civil society leaderships committed to the protection and promotion of human rights. By adopting the PNDH on 13 May 1996, Brazil became one of the first countries in the world to fulfill the recommendation of the World Conference on Human Rights (Vienna, 1993), having turned human rights into a governmental public policy issue.

Among its commitments, the PNDH includes sanctioning as well as implementing and disseminating international acts and actions aimed at the protection and promotion of Human Rights by defining as short-term activities, among others: adoption of domestic legislation to enable the fulfillment, by Brazil, of the international commitments undertaken, as a State Party, in human rights conventions and treaties; implementation of the Platform of Action from the World Conference on Human Rights (held in Vienna, in 1993), which defines violence against women as a violation of human rights; implementation of the Platform of Action of the World Conference on Population and Development (held in Cairo, in 1994); implementation of the Inter-American Convention (signed in Belém do Pará, in June 1994), with a view to prevent, punish and eradicate violence against women; to implement the IV World Conference on Women (held in Beijing, in 1995); and to implement the International Convention on the Elimination of All Forms of Racial Discrimination. It is worth recalling that on 13 May, 2002 the updated version of the PNDH was issued; it now includes specific actions for the guarantee of the right to education, health, social security and welfare, labor, housing, a healthy environment, food, culture and leisure, as well as proposals meant for education and awareness of the Brazilian society in general, with a view to developing and consolidating a human rights culture.

The table below, regarding the participation of men and women in the upper ranks of the Executive Branch in the past decade shows the existing imbalance between what the Federal Constitution and the domestic legislation establish, and the Brazilian reality.

**Table 17 – Female Participation in the Executive Branch**

**Brazil, 1990-2000**

| Office | 1990 | 1994 | 2000 |
|---|---|---|---|
| President | 0 | 0 | 0 |
| Vice-President | 0 | 0 | 0 |
| State Ministers | 2 | 1 | 0 |
| Deputy-Ministers | 0 | 0 | 0 |
| Governors | 0 | 1 | 1 |
| Lieutenant-Governors | 2 | 0 | 2 |
| Chairperson of State-Owned Companies | 0 | 0 | 0 |

Source: FLACSO – Brazil CEPAL. Data provided by governmental agencies.

**Table 18 – Women Mayors by Region**

**1972-1992, Brazil**

| Region | 1972 | 1976 | 1982 | 1986 | 1988 | 1992 |
|---|---|---|---|---|---|---|
| Northern | 4 | 0 | 6 | 8 | 19 | 34 |
| Northeastern | 44 | 52 | 51 | 74 | 92 | 149 |
| Southeastern | 7 | 1 | 20 | 17 | 37 | 70 |
| Southern | 0 | 2 | 4 | 5 | 11 | 32 |
| Central-Western | 3 | 3 | 2 | 3 | 11 | 32 |
| Country Total | 58 | 58 | 83 | 107 | 171 | 317 |

Source: BLAY, E. *Overcoming alienation*: women and the local power. Brazil - 1990. Brazilian Institute of Municipal Administration; National School of Urban Services; and Center for Women and Public Policy Studies.

Within the scope of ministries, initiatives aimed at reducing inequalities between men and women and among races/ethnicities have emerged only recently. Some of the programs developed by the ministries, such as the National Program for Family Agriculture (PRONAF), the Program for Employment and Income Generation (PROGER), and the Employee's Support Fund (FAT) have earmarked funds for the re-qualification and development of labor, with special incentive to women. The Ministry of Agrarian Development has implemented important pioneer measures in the sense of obtaining greater balance between men and women in decision-making positions. To this end, it has adopted the percentage-by sex system. In addition, it also launched a quota program in agrarian reform, which will initially earmark 30 percent of all funds for settled women who lead family agricultural units. According to the estimates of the Ministry,

only 11 percent of all persons holding title deeds of agrarian reform land are women, although half of the country's population is made up of women. The Ministry of Agrarian Development has also adopted the quota policy in order to face racial/ethnical discrimination, by reserving 20 percent of its managerial positions and outsourced services to Afro-descendants. The target for 2003 is 30 percent. In the same regard, the Ministry of Justice, through Administrative Ruling nº 1.156 of 20 December 2001, established their affirmative action program for management positions and outsourced services. Out of these positions, 20 percent are to be held by Afro-descendants, 20 percent by women, and 5 percent by physically disabled persons.

It is worth emphasizing that, within the Ministry of External Relations, the Term of Amendment to the Protocol of Cooperation on Affirmative Action of the Rio Branco Institute, which establishes "scholarship awards for diplomatic vocation", was signed on 14 May 2002. Through this Term of Amendment, funds totaling R$ 350,000 a year have been made available so that concrete actions may be immediately adopted within the context of the Protocol. Registration forms for the 20 annual scholarships may be submitted, between May 14 and June 20, by candidates of African origin who wish to prepare for the entrance examination to the Rio Branco Institute, for the purpose of admittance into the diplomatic career. The selection of candidates will also take gender equity into account.

**Judicial Branch**

Within the Judicial Branch, it is worth emphasizing, as a significant and unprecedented fact, that five women have been nominated for the position of Associate Justice – three in the Superior Court of Justice, one in the Federal Supreme Court, and one in the Superior Labor Court. However, besides the low participation of women in these courts of law, there is also a complete absence of women in the supreme electoral and military courts.

On 11 August 1999, the Commission on Constitution and Justice of the Chamber of Deputies approved Bill of Amendment to the Constitution nº 7/99, which directly affects the composition of the Federal Supreme Court and constitutes a measure of affirmative nature aimed at overcoming the low participation of women in the upper ranks of the Judiciary. This Bill adds a new paragraph to article 101 of the Federal Constitution, establishing that appointments for the position of Associate Justice shall abide by the criterion of rotation between genders.

The breaking of male monopoly in the Judiciary resulted from the mobilization of governmental and non-governmental organizations of women. It represents a great advance in the progressive increase in the number of women in management positions in the Judiciary. It is worth recalling that the President of the Republic is responsible for appointing the higher ranks of the Executive and Judicial Branches. It is therefore possible that a political decision will be made, in the sense of establishing a balance between genders with regard to these offices.

It is worth emphasizing that the presence of women in the other ranks of the Judiciary is already rather significant, and at present stands at about 30 percent, according to data provided by political scientist Lúcia Avelar.

The high participation of women in Higher and Lower Civil Courts is explained by the fact that these offices are occupied by means of an entrance examination and not by appointment.

**Table 19 – Lower Courts, Higher Federal and Labor Courts**

**Number of men and women judges in relation to the number of offices, and vacancy percentage**

**– Brazil – 1999**

| Body | Offices provided for in the law | Offices taken | | Vacant Offices | Percentage | | |
|---|---|---|---|---|---|---|---|
| | | Male Judges | Female Judges | | Male Judges | Female Judges | Vacancy |
| Lower Courts | 9,678 | 4,977 | 2,221 | 2,480 | 69.14 | 30.86 | 25.63 |
| Federal Courts | 903 | 443 | 167 | 293 | 72.62 | 27.38 | 32.45 |
| Labor Courts | 4,507 | 2,758 | 1,271 | 478 | 68.45 | 31.55 | 10.61 |
| Total | 15,088 | 8,178 | 3,659 | 3,251 | 69.09 | 30.91 | 21.55 |

Source: Federal Supreme Court – National Database of the Judicial Branch.

**Table 20 – Participation in the Public Prosecution Service by gender/region**

**Brazil – 2000**

| Region | District Attorneys, Deputy-District Attorneys and State Attorneys | | | | |
|---|---|---|---|---|---|
| | Men | % | Women | % | Total |
| North | 19 | 100 | 0 | 0 | 19 |
| North | 53 | 76 | 17 | 24 | 70 |
| South | 151 | 67 | 74 | 33 | 225 |
| South | 76 | 70 | 33 | 30 | 109 |
| Central-West | 18 | 89 | 04 | 11 | 22 |
| Federal District | 75 | 73 | 28 | 27 | 103 |
| Total | 392 | 71.5 | 156 | 28.5 | 548 |

Source: Public Prosecution Service.

**Factors and Difficulties**

The lack of data aggregated by gender is the first major difficulty to be overcome in an analysis of women's situation in the country's public and political life, and for evaluation of the existing levels of equality. As for retrospective studies, the situation is even more complicated: information aggregated by gender covers only a small number of years. The situation gets worse with regard to data on the race/color variable.

Since 1934[86] the Federal Constitution has ensured women the right to vote and be voted. However, when it comes to electoral disputes, this right, by itself, has not been sufficient to place women in a situation of equality in relation to men. This situation persists, in spite of the existing balance between men and women voters: according to data from the Supreme Electoral Court there are currently in Brazil 55,437,428 women voters, who account for 50.48 percent of the body of voters; and 54,152,464 men voters, who represent 49.31 percent of all voters, in addition to 236,371 registered voters (0.22 percent) without definition of sex. The number of women voters has been stable throughout the past decade, with the following percentages in terms of the overall number of voters: 50.31 percent in 1994; 49.93 percent in 1996; and 49.77 percent in 1998. Nevertheless, this balance is not reflected in the number of female candidates and of women elected. Most candidates and representatives elected for various offices are men.

Access to high-ranking positions is an area of women empowerment in which the women's movement has invested most consistently in the past decade. Women's participation in public office and managerial positions, as shown above, is not consistent with their participation in the country's electorate and economy. It is worth recalling the Quota Law, in the 1990s, which provided for quotas in politics, to ensure a more balanced dispute between men and women in proportional elections, that brought about the discussion about women's political participation and their relation to the various levels of power.

The current participation of women in the Legislative, Executive and Judicial Branches and at federal, state, and municipal level shows how much it still needs to be done for women to be equally represented.

[86] The right to vote was provided for in the Electoral Code in 1932, and reaffirmed in the 1934 Constitution.

| Table 21 – Participation in the Legislative Branch | | | | | |
|---|---|---|---|---|---|
| | **Women** | **%** | **Men** | **%** | **Total** |
| City Council Member* | 6,992 | 11.61 | 53,253 | 88.39 | 60,245 |
| State//District Deputy | 111 | 10.48 | 948 | 89.52 | 1,059 |
| Federal Deputy | 35 | 6.82 | 478 | 93.18 | 513 |
| Senator | 05 | 6.17 | 76 | 93.83 | 81 |
| **Total** | **7,143** | **11.54** | **54,755** | **88.46** | **61,898** |

CFEMEA – May 2001

* 20 names- gender not informed

| Table 22 – Participation in the Executive Branch | | | | | |
|---|---|---|---|---|---|
| | **Women** | **%** | **Men** | **%** | **Total** |
| President | 00 | 0.00 | 01 | 100.00 | 01 |
| Governor | 01 | 3.70 | 26 | 96.30 | 27 |
| Mayor* | 318 | 5.72 | 5,241 | 94.28 | 5,559 |
| **Total** | **319** | **5.71** | **5,268** | **94.29** | **5,587** |

CFEMEA – March 2001

* 01 name – gender not informed

| Table 23 – Participation in the Judicial Branch | | | | | |
|---|---|---|---|---|---|
| | **Women** | **%** | **Men** | **%** | **Total** |
| STF – Federal Supreme Court* | 01 | 9.09 | 10 | 90.91 | 11 |
| STJ – Superior Court of Justice** | 03 | 9.09 | 30 | 90.91 | 33 |
| TST – Supreme Labor Court*** | 01 | 5.88 | 16 | 94.12 | 17 |
| **Total** | **05** | **8.20** | **56** | **91.80** | **61** |

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* Associate Justice Ellen Grace Northfleet

** Associate Justices Eliana Calmon, Fátima Nancy Andrighi and Laurita Hilário Vaz

*** Associate Justice Maria Cristina Irigoyen

The tables above provide no information on the number of black women in the Legislative. No woman has ever been elected as head of the federal and state Executive Branches. Likewise, there is no information on the number of black female heads of municipal executive branches. None of the three aforementioned Chief Justices is black.

Although necessary and indispensable, Legislative measures cannot, by themselves, solve the issue of the discrimination that white women, and especially black women and women of other races/ethnicities have to face in Brazilian society. First, existing laws will have to be complied with. Second, new laws and public policies including the gender and race perspective will have to be designed and implemented so that women can be actually empowered. This empowerment must necessarily include the issue of diversity.

Within the Legislative Branch, the situation is similar to the participation of women in political parties. There are no data aggregated by gender on party affiliation, and the participation of women in high-ranking positions in political parties is still very low: of the 30 registered political parties, only 12 have feminine nuclei or integration. Only a small number of political parties emphasize in their programs, the gender and race/ethnicity question, or that of any other social segment equally discriminated against.

The absence of women – white ones and particularly black women – in the higher echelons in political parties is also a reality. Very few political parties have adopted a policy of quota by gender, in order to interfere on this reality: the Labor Party (PT); the People's Social Party (PPS); the Green Party; and the Democratic Labor Party. The effectiveness of this policy, should it be implemented, may be seen in the table below, where PT and PDT, parties that have implemented the quota system internally, stand out among the others, with regard to the percentage of women in high-ranking positions in the National Councils and Executive Committees of their political parties.

**Table 24 – Women in high-ranking positions in major Brazilian political parties, 2000**

| Party | | No. of Members | No. of Women | % of Women |
|---|---|---|---|---|
| PT | National Council | 90 | 25 | 27.78 |
| | National Executive Committee | 21 | 07 | 33.4 |
| PSDB | National Council | 128 | 08 | 6.25 |
| | National Executive Committee | 25 | 05 | 20 |
| PFL | National Council | 200 | 10 | 05 |
| | National Executive Committee | 22 | 00 | 00 |
| PDT | National Council | 158 | 32 | 20.25 |
| | National Executive Committee | 07 | 01 | 14.28 |
| PMDB | National Council | 150 | 09 | 06 |
| | National Executive Committee | 18 | 01 | 5.56 |
| PPB | National Council | 250 | 26 | 10.4 |
| | National Executive Committee | 22 | 00 | 00 |

Source: Political Party Councils - December 2000.

The need to have high-ranking positions re-distributed between men and women is felt not only within the scope of the State and of political parties, but also in the different organizations of civil society.

The number of women participating in non-governmental organizations, labor unions and other areas of political representation is considerable. However, the participation of women in high-ranking positions in those organizations is still much lower than that of men. On the other hand, as far as the private sector is concerned, according to ***Exame*** Magazine ranking, out of the best and largest 500 companies, only three had women in high-level positions. A survey carried out by the Guide on The Best 1000 Companies to Work For indicated that women accounted for a mere 24 percent of the overall number of managers, and only 7.7 percent of high-rank directors.

In terms of figures, women are present in every area of Brazilian life – and, in many of them in equal conditions with men. But these same figures, when analyzed from the standpoint of empowerment, point out to a different reality.

**Table 25**

**Federal Civil Servants in the Direct and Indirect Administration Brazil, 1998**

| | Men | % | Women | % | Total |
|---|---|---|---|---|---|
| Direct Administration | 93,646 | 52.14 | 85,954 | 47.86 | 179,600 |
| Government Agencies | 31,454 | 49.07 | 32,641 | 50.93 | 64,095 |
| Foundations | 44,157 | 72.59 | 16,671 | 27.41 | 60,828 |
| Total | 169,257 | 55.58 | 135,266 | 44.42 | 304,523 |

Source: SRH/MARE.

Note: The table above does not include state-owned companies, mixed enterprises, and university foundations.

**Table 26**

**Federal Civil Servants by Level of Higher Management and Assistantship Positions (DAS), Brazil, 1998**

| Level/Position | Men | % | Women | % | Total |
|---|---|---|---|---|---|
| DAS 1 | 3,641 | 54.47 | 3,043 | 45.53 | 6,684 |
| DAS 2 | 3,519 | 60.14 | 2,332 | 39.86 | 5,851 |
| DAS 3 | 1,508 | 62.16 | 918 | 37.84 | 2,426 |
| DAS 4 | 1,173 | 70.58 | 489 | 29.42 | 1,662 |
| DAS 5 | 456 | 83.52 | 90 | 16.48 | 546 |
| DAS 6 | 118 | 86.76 | 18 | 13.24 | 136 |
| Total | 10,415 | 60.18 | 6,890 | 39.82 | 17,305 |

Source: SRH/MARE.

In the example above, data on the Direct Administration, Government Agencies, and Foundations display a significant balance between their male and female employees. This also occurs in all other areas. Nevertheless, this balance is not reflected in the number of men and women who hold higher management and assistantship positions (DAS) in the government: as the DAS pay level increases, the number of women in these positions decrease.

An analysis of the data available in the report indicates that today women play a significant role in Brazilian society: in schools, universities, in the most varied professions. However, they still represent a minority in top-level and power positions within most structures and institutions. Several factors contribute to this situation, such as the existence of a culture that for a long time set the space of politics apart as a privilege of men.

It is worth recalling that women only achieved the right to vote in 1932. The participation of women running for elective offices is still more recent: the first lady senator (Marluce Pinto – PMDB/RR) was elected for the 1991-1995 term;[87] and the first and only woman governor was elected in 1994 and re-elected in 1998.[88] On the other hand, the responsibilities for home and children still befall women, as a result of the precarious engagement of men, and the lack of interest on the part of the State.

Policies implemented to date need to have a more general scope. The fact that a few ministries have adopted affirmative action measures to eliminate race and gender discrimination is not enough. These policies should represent a governmental guideline which every ministry, foundation and government agency, as well as the Legislative and Judicial Branches, would have to comply with.

It is equally important that the development and implementation of public policies with a gender and race/ethnicity perspective comprises all fields: education, violence, health and power. Finally it is important that programs, projects and services may be replicated and disseminated to every Brazilian state and municipality. It is also worth emphasizing that it is indispensable that funds from public budgets are earmarked for the implementation and enforcement of these policies with a gender and/or race/ethnicity perspective.

[87] Before her, some others had taken office as substitutes. The first one was Eunice Micchilles (PDS/PFL/ AM), who took office after the death of its incumbent, Senator João Bosco. Her term in office started on 31 May 1979 and ended 31 January 1987. The second was Laélia de Alcântara (PMDB/AC), who took office as a result of the leave of absence of Senator Adalberto Sena. Her term in office started on 3 April 1981 and ended 29 July 1981. The third was Maria Syrlei (PMDB/SC). The lady senator, who was the second substitute, took office in order to fill in for Senator Jaison Barreto, who was on leave of absence, and as a result of impediment of the first substitute, senator Dejandir Dalpasquale. She remained in office from 11 June 1981 to 5 August 1981. The fourth was second substitute Dulce Braga (PDS/SP) who, in view of the death of the first substitute, senator Ferreira Filho, was called in to replace senator Amaral Furlan during his leave of absence. She remained in office from 30 June 1982 to 29 November 1982. The fifth was Íris Célia (PDS/AC), who replaced senator Jorge Kalume from 14 September 1983 to 11 January 1984. The sixth was Alacoque Bezerra (PFL/CE), who was called in to replace senator Afonso Sancho. Senator Bezerra's term of office started on 19 October 1989 and ended 15 February 1990.

[88] Roseana Sarney/PFL, governor of the state of Maranhão.

*Article 8*

***States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.***

Since 1918 Brazilian women have pursued the equality provided for in article 8 above. This progress, however, is rather slow. Today, feminine participation in Brazilian overseas representations is still low: 18.2 percent – and there has been even a setback, since the Diplomatic Career was prohibited to women from 1938 to 1954.

**Legislative Measures**

The first woman – Maria José de Castro Rabello Mendes – was admitted into the Ministry of External Relations (MRE) in 1918, through a public entrance examination. She was also a Brazilian civil servant.[89] She was allowed to take the examination as a result of the understanding that the term "every Brazilian" contained in the Constitution of 1891 did not exclude women and covered both sexes.[90]

At that time, the Ministry of External Relations had three different groups of employees: the Diplomatic Corps, the Consular Corps, and the Staff of State Secretariat Officers, into which Maria José de Castro Rabello was admitted. Other women followed in her footsteps.

The reorganization of the Ministry of External Relations introduced by Decree nº 19.952 of 15 January 1931 (the *Afrânio de Mello Franco Reform*) was inspired by the principle that all MRE employees should alternate periods of overseas service with periods of work in Brazil. This led to elimination of the position of State Secretariat Officer. The women who held this position were transferred to the Consular Corps; not one of them was transferred to the Diplomatic Corps. A new restructuring of the Ministry of External Relations introduced by Decree Law nº 791 of 14 October 1938 (the *Oswaldo Aranha Reform*) merged the Diplomatic and Consular Corps, giving rise to the Diplomatic Career. The single paragraph of article 30 of this Decree-Law established that only "male" native Brazilians could be admitted into the Diplomatic Career, thereby clearly expressing the discrimination that existed against women diplomats.

Out of some 20 women admitted into the Ministry of External Relations between 1918 and 1938, only three reached the highest-ranking position, in 1957, 1960, and 1972, respectively. The first such woman was Mrs. Odette de Carvalho e Souza, who, to this date is the woman to have held the most important position in the State Secretariat of External Relations.[91] In 1984, when CEDAW was ratified by Brazil, there was not a single Brazilian female ambassador, since the first three had already retired.

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[89] This information, which is contained in a letter dated 4 April 1963 written by Mrs. Berta Lutz, one of the pioneers of feminism in Brazil, was reproduced in the second edition (1982) of the book entitled "A Mulher Brasileira. Direitos Políticos e Civis", by João Batista Cascudo Rodrigues.

[90] Still according to the aforementioned letter, in the case of Maria José "the legal opinion was issued by Rui Barbosa himself". Rui Barbosa was a deputy, senator, and minister. He also ran for the Presidency of the Republic on two different occasions and held memorable campaigns. His behavior always showed solid ethical principles and great political independence. He participated in the discussion of all the major issues of his time, such as the Abolition Campaign, the defense of the Federation, the establishment of the Republic, and the Civilist Campaign. An unbeatable speaker and researcher of the Portuguese language, he chaired the Brazilian Academy of Letter, where he replaced the great Machado de Assis. Rui Barbosa represented Brazil brilliantly in the Second International Peace Conference held in The Hague and, at the end of his life, he was elected judge of the International Court of the Hague.

[91] From 1956 to 1959 Mrs. Souza was the head of the Political Department of the MRE, a position that in the current organizational framework corresponds to those of Assistant Secretary General for Bilateral Policy and Assistant Secretary General for Multilateral Policy.

Admission of women into the diplomatic career was only legally accepted after the approval of Law nº 2.171, of 18 January 1954, in which article 1 established that native Brazilians "without gender discrimination" could be admitted into the Diplomatic Career.

Before that, however, in 1952, the gate of access to the career – registering for and passing the examinations for admission into the Preparatory Course to the Rio Branco Institute Diplomatic Career – had been legally open, when the Federal Supreme Court accepted the *writ of mandamus* filed by Maria Sandra Cordeiro de Mello, so that she could register for the examination.

If on the one hand the hurdle against the admission of women into the diplomatic career had been eliminated, on the other hand restrictions against couples – which were gradually overcome, although with some difficulty – still persisted. The first provision against couples of diplomats was article 3, paragraph 2 of Executive Law 9,202 of 26 April 1946, which provided for the resignation of women diplomats who married their colleagues. This provision precluded women diplomats from marrying their colleagues – something that used to be permitted – and meant that, in such a case, they should sacrifice their career. Only after interpretation by the Legal Advisor of the Ministry of External Relations of Law 3,917, which provided for the new Personnel Regulation of the Ministry, marriage between diplomats was once again allowed. Yet, the law also prevented both diplomats from being stationed overseas at the same time. Article 6, item "h" of Decree Law nº69 of 21 November 1966 gave the spouse diplomat the right to "to be temporarily released from his/her official duties" (as non-remunerated leave of absence to accompany the spouse that was not taken into account for the purpose of retirement). Although the Executive Law did not specify which spouse should take the leave of absence, in practice it was always the woman diplomat who did, given the weight of the cultural understanding that the husband's career was always more important than the wife's and that therefore the wife diplomat should sacrifice her career on behalf of her husband's. This situation resulted from Law 5,887 of 31 May 1973, which, by providing for the aforementioned leave of absence, established in its paragraph 7 that the duration of the leave of absence should be taken into account for the purpose of retirement and any other benefits, as appropriate). Only in 1986, Law 7,501 of 27 June 1986 allowed husband and wife diplomats to be transferred overseas. The Law also allowed the spouse to choose between taking the unpaid leave of absence (which by then was taken into account for the purpose of retirement as well as other benefits) and being simultaneously transferred to the same diplomatic representation or to another post in the same city.

The last negative provision to be eliminated by force of Law 9,392 of 19 December 1996 was the discrimination between the salaries of husband and wife diplomats stationed overseas. This meant a 40 percent decrease in salary.

Today, there are no gender discriminating rules in the Diplomatic Career. However, the above-mentioned prejudices and obstacles, which hindered the career of some women diplomats married to their colleagues, have contributed to reduce the number of women diplomats, especially in high-ranking positions. This fact is reflected in the decisions regarding promotions in the career, and causes most women diplomats to reach only intermediate-level positions, i.e., First Secretary or Counselor, as shown on the table below.

By March 1981, 27 years after Law nº 2.071/56 was issued, the presence of women in the Diplomatic Career was still insignificant: out of 707 positions, only 91 – or 12.8 percent - were held by women. In the two highest-ranking offices – First Class Minister (Ambassador) and Second Class Minister - from a total of 204 diplomats only two were women (none of which was an Ambassador) – a participation of 1.0 percent. This situation has improved a little:

**Current distribution of Brazilian diplomats by rank and gender**

| Rank | Men | Women | Total | % of women |
|---|---|---|---|---|
| First Class Ministers | 91 | 5 | 96 | 5.1 |
| First Class Ministers – Special Staff | 59 | 2 | 61 | 3.3 |
| Second Class Ministers | 111 | 18 | 129 | 13.9 |
| Second Class Ministers – Special Staff | 15 | - | 15 | - |
| Counselors | 130 | 40 | 170 | 23.5 |
| Counselors – Special Staff | 32 | 7 | 39 | 17.9 |
| First Secretaries | 143 | 46 | 189 | 24.8 |
| Second Secretaries | 147 | 37 | 184 | 20.1 |
| Third Secretaries | 122 | 33 | 155 | 21.2 |
| **TOTAL** | **848** | **189** | **1,037** | **18.2** |

**Source:** Personnel Department of the Ministry of External Relations

The presence of women is stronger when all MRE Careers and Employment categories are taken into account:

**Distribution of MRE Employees by career or category**

| Career/Category | Men | Women | Total | % of Women |
|---|---|---|---|---|
| Diplomats | 848 | 189 | 1,037 | 18.2 |
| Chancery Officers | 274 | 456 | 730 | 62.4 |
| Chancery Assistants | 279 | 372 | 651 | 57.1 |
| Other | 501 | 233 | 734 | 31.7 |
| **TOTAL** | **1,902** | **1,250** | **3,152** | **39,6** |

Source: Personnel Department -- Ministry of External Relations

The Diplomatic, Chancery Officer and Chancery Assistant careers make up the "Brazilian Foreign Service". The diplomatic career – where women account for just 18.2 percent of the total – is the one with the highest responsibility, prestige and remuneration. Conversely, as regards the other two careers, in which employees report even to the lowest-ranking diplomats, women are a majority.

The participation of Brazilian women in the activities of international organizations is linked to the presence of women in the Diplomatic Career and in the public administration in general, and is unrestricted. It depends on the position the woman holds in the hierarchy of the public agency to which she belongs. These women participate in international meetings for the defense of human rights and other themes of a social nature, which may be attended as well by women who are not government employees, but are committed to the defense of these themes.

**Factors and difficulties**

The low participation of women in the Diplomatic Career and in international conferences reflects the weight of a culture that resists the power of women. It is also affected by the Career requirements, according to which, in order to be promoted diplomats must have served overseas for a certain period of time which varies according to the level in the career. This requirement imposes limitations on the professional activities of the spouses of women diplomats who are not diplomats themselves.

Until very recently, no incentive policy had ever been implemented to correct the disparity between male and female diplomats. Likewise, no comprehensive study has ever been performed on the reasons why women's rate of admittance into the career is so feeble, despite the fact that the number of women who enroll for the examination is almost as high as the number of men.

The process of modernization and improvement of the Rio Branco Institute (the academy responsible for training Brazilian diplomats) includes an affirmative action project that may facilitate the access of minorities – and possibly of women – to the diplomatic career, through scholarships granted to such candidates to the Entrance Examination to the Diplomatic Career (CACD). This measure may provide easier access of these candidates to professors or courses, so that they may be better prepared to compete with other candidates to CACD.

***Article 9***

***1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.***

***2. States Parties shall grant women equal rights with men with respect to the nationality of their children.***

**Legislative Measures**

Equity between men and women, which is provided for in article 5,I of the Brazilian Federal Constitution, is ensured by the entire legal system in all matters relating to individual, social and collective rights. Brazilian legislation therefore protects equally its nationals, whether men or women, and treats equally migrants of both sexes.

Brazil has signed and ratified all of those international conventions and treaties, among which is CEDAW, that are aimed at the protection of nationality in general and the nationality of women, in particular.

As far as nationality is concerned, the juridical tradition in Brazil adopts the "ius solis" principle, although it also accepts the "ius sanguinis" principle. Throughout history, Brazil has received important voluntary migratory flows from European and Asian countries, as well as forced migratory flows from Africa until the 19th century, when slavery was finally abolished in the country.

On the issue of nationality, the Brazilian Constitution introduces in Chapter III of title II provisions on the precept of equality; Article 12, I establishes that:

*Art. 12 – The following are Brazilians:*

*I – by birth:*

*a) those born in the Federative Republic of Brazil, even if of foreign parents, provided that they are not at the service of their country;*

*b) those born abroad, of a Brazilian father or a Brazilian mother, provided that either of them is at the service of the Federative Republic of Brazil;*

*c) those born abroad, of a Brazilian father or a Brazilian mother, provided that they come to reside in the Federative Republic of Brazil and opt for the Brazilian nationality at any time;.*

The Constitution therefore ensures full equality between men and women with regard to the Brazilian nationality.

The guarantee of Brazilian nationality is extended equally to all those who meet the legal requirements, and there is no discriminating factor that could lead to the loss of nationality such as, for example, marrying a foreign man or the change of the husband's nationality during the marriage, since the nationality of married women in Brazil is not linked to the nationality of their husbands.

Rules on nationality are provided for in the Law of Introduction to the Brazilian Civil Code, Decree nº 4.657 of 4 September 1942, which establishes that:

*Art. 7 – The laws of the country in which the person resides shall establish the rules on the beginning and end of the family's personality, as well as its name, capacity and rights.*

**Brazilian women therefore do not lose their nationality by residing in a foreign country or marrying a foreigner. Furthermore, their children will also have the right to the Brazilian nationality, as provided for in the Federal Constitution of 1988. Nevertheless, it is worth emphasizing that by marrying a foreigner in a foreign country and residing abroad, Brazilian women will be subjected to the conjugal system of that country. The laws of that country, if discriminatory, may deprive them of the rights related to the parental personality, capacity and power for as long as they reside in such country.**

***Article 10***

***States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:***

***(a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in preschool, general, technical, professional and higher technical education, as well as in all types of vocational training;***

***(b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;***

***(c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;***

***(d) The same opportunities to benefit from scholarships and other study grants;***

***(e) The same opportunities for access to programmes of continuing education including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;***

***(f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;***

***(g) The same opportunities to participate actively in sports and physical education;***

***(h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.***

**Legislative Measures**

**Federal Constitution**

The Federal Constitution of 1988 considerably expands the universe of social rights by integrating them, for the first time ever in the constitutional history of Brazil, into the Declaration of Fundamental Rights.

The constitutional text, in its article 6, as altered by Constitutional Amendment nº 26 of 14 February 2000, establishes that "education, health, work, housing, leisure, security, social security, protection of motherhood and childhood, and assistance to the destitute, are social rights, as set forth by this Constitution".

The Brazilian Constitution devotes an entire Chapter, under its Social Order title, to the right to education, culture and sports, and does not restrict its exercise for reason of gender.

In its article 205, it states that education is the right of all and duty of the State and of the family. The primary objective of education, according to the Brazilian Constitution, is the full development of the person, his/her preparation for the exercise of citizenship and his/her qualification for work.

Article 206 defines the principles on the basis of which education should be provided, emphasizing the need to ensure equal conditions of access and permanence in school.

The constitutional text seeks to emphasize the duty of the State towards education by ensuring, in article 208: mandatory and free primary education; progressive growth to universal free secondary education; specialized schooling for the physically disabled, preferably within the regular school system; assistance to children from zero to six years of age in day-care centers and pre-schools; access to higher levels of education, research and artistic creation, according to individual capacity; offer of regular evening courses adequate to the conditions of the student; assistance to elementary school students by means of supplementary programs and supply of school material, transportation, food and health assistance.

The access to compulsory and free education is a subjective public right, according to §1º of article 208 of the Federal Constitution of Brazil. Under §2º of said article, the competent authority shall be liable for failure of the Government to provide compulsory education, or for providing it irregularly.

The Constitution also sets guidelines for fundamental education, in which minimum contents are defined in order to ensure a common basic schooling with due respect for national and regional cultural and artistic values (article 210).

In order to ensure appropriate funds for the development and support of education, the 1988 Constitution establishes, in article 212, that the Union shall apply, annually, never less than eighteen percent of tax revenues, and the states, the Federal District and the Municipalities, at least twenty-five percent of their revenues, including those resulting from transfers, on the upkeep and development of education. It also establishes that public elementary education shall have, as an additional source of funding, the social contributions for education collected from business enterprises. (§5, as altered by Constitutional Amendment no. 14 of 12 September 1006).

Regarding culture, the constitutional text, in article 205, ensures to all the full exercise of cultural rights, and access to the sources of national culture.

In the section devoted to sports, the Federal Constitution of 1988 establishes that it is the duty of the State to encourage the practice of formal and informal sports, as a personal right of each individual (article 217).

Among the most important components of the reforms implemented in the 1990s are: enforcement of the New Law on Educational Guidelines (LDB, Law 9,394, approved in December 1996); a curricular reform that established the Curricular Parameters or References for the various educational levels; introduction of National Systems of Assessment of basic education (SAEB and ENEM) and higher education (ENC); textbook evaluation and distribution policy; rules for education financing, especially through the law that created the Fund for Maintenance and Development of Primary Education and Teacher Enhancement (FUNDEF).

Brazil is a signatory in the commitments undertaken at the Education for All – EFA Conferences (Conferences of Jomtien and Dakar) and an active participant in the EFA-9 group (which congregates the nine most populous developing countries in the world). Brazil is also a party to all the international commitments that provide for equal educational opportunities to men and women, resulting from multilateral agreements concluded in UN sponsored International Conferences held in the 1990s.

Official documents have repeatedly confirmed that the Brazilian educational system is immune to discrimination against women and gender discrimination (CNDM, 1998; MEC/INEP, 1999 and 2000b), as shown in the text below, which was taken from the Country Report to the Dakar Conference.

*"The guidelines established in Aman and Islamabad have already been incorporated into the educational policy of the Brazilian government, especially those related to the importance of training, status, remuneration and motivation of teachers. On the other hand, the recommendations of the V International Conference on Adult Education (Hamburg, 1997) are the main concern of the National Education Plan. Of the objectives and targets established in the EFA 9 conferences, only those related to the prioritization of women and girls' education have not been adopted by Brazil, where this problem does not occur. Schooling rates, as well as rates regarding schooling success and the*

*average number of school years are higher among women than among men. Should this trend prevail, the concern for the gender issued will have to be reversed in Brazil* (MEC/INEP, 2000b, page 15-15).

**Federal Legislation**

In tune with constitutional precepts, Law 9,343 of 20 December 1996 established the guidelines and bases for national education, ensuring equal conditions of access and permanence in school.

The National Human Rights Program (Federal Decree nº 1.904 of 13 May 1996) – which aims, among other things, at implementing, in the short-, medium-, and long-term those measures to promote and defend human rights – has established, with regard to the education of women, the following actions to be implemented:

- In the short term: to encourage research and the dissemination of information on violence against and discrimination of women, as well as on forms of protection and promotion of women's rights;
- In the medium term: to encourage inclusion of the gender perspective into the education and training of civilian and military government personnel, as well as into the curricular guidelines for basic and secondary education, for the purpose of promoting changes of mind and attitude, and acknowledgement of women's right to equality not only in the field of civil and political rights but also in the field of economic, social and cultural rights;
- In the long term: to define governmental policies and programs at federal, state and municipal level, with a view to implementing the laws that ensure equal rights to men and women in all fields, including health, education and professional training, work, social security, property and rural credit, culture, politics and justice.

**State Constitutions**

Nearly all State Constitutions[92] adopt the provisions of article 205 of the Federal Constitution, which establishes that education is the right of all and duty of the State and of the family, in addition to the provisions of article 206 of said Constitution, which establishes that education shall be provided on the basis of the principle of equal conditions of access and permanence in school, among others. Constitutions of the states of Espírito Santo, Mato Grosso, Rondônia, Roraima, São Paulo, and the Organic Law of the Federal District fail to clearly mention this principle as regards the access to and permanence in school.

Constitutions of the states of Amapá, Bahia, Ceará, Goiás, Rio de Janeiro, and São Paulo and the Organic Law of the Federal District provide for the guarantee, by the State, of non-differentiated education by preparing their educational agents in the fields of both pedagogic performance and contents of the teaching material, so as not to discriminate against women.

Among the principles that should guide education in the state, the Constitution of the state of Alagoas establishes that the educational process should be guided so as to develop an awareness of equality in the citizenry, regardless of gender, color, race or origin, as well as the special contribution of women, as mothers and workers, to the development of the Nation. The Organic Law of the Federal District determines that the school curriculum – at primary, secondary and university level – should include, among the subjects and disciplines, contents about the struggles of women, black and Indigenous peoples in the history of mankind and of Brazilian society.

The Constitution of the state of Ceará contains the highest number of measures aimed at the elimination of discrimination between men and women in the field of education. These measures are in tune with the provisions of

[92] Acre, Alagoas, Amapá, Amazonas, Bahia, Ceará, Goiás, Maranhão, Mato Grosso, Mato Grosso do Sul, Minas Gerais, Pará, Paraíba, Paraná, Pernambuco, Piauí, Rio de Janeiro, Rio Grande do Norte, Rio Grande do Sul, Santa Catarina, São Paulo, and Tocantins.

CEDAW on the subject, and show the intention of the local legislative to adjust to the Convention. The above mentioned Constitution also defines affirmative measures to be adopted in order to reduce, as soon as ever possible, the knowledge gap between men and women in the state of Ceará. It also provides for the implementation, within the organizational framework of the State Secretariat for Education, of a sector on Women and Education for the purpose of adopting, together with the Council of Women's Rights of the State of Ceará (CCDM), appropriate measures to guarantee equal rights to women, such as the elimination of discriminatory and stereotyped concepts about the role of men and women in textbooks, in teaching programs and methods, as a way to encourage mixed education; equal opportunities, access to complementary education, including functional and adult literacy programs; vocational guidance and professional qualification with access to any educational level, both in urban and rural areas; the reduction of school dropout rates and the organization of programs of continued education for young women who have prematurely dropped out of school; and the opportunity to actively participate in sports activities and physical education.

The Constitutions of the states of Amapá, Ceará, Pernambuco, Roraima, São Paulo, Tocantins, and the Organic Law o the Federal District include sex education in the curricula of primary and secondary education. Of these, the Constitutions of the states of Ceará, Pernambuco and Roraima also include human rights contents in their school curricula.

**State Legislation**

São Paulo State Law 5,447 of 19 December 1986 provides for the State Council of Women and establishes, in its article 1, as one of the Council's duties, the development of guidelines and the promotion, at all levels in the Direct and Indirect Administration, of activities aimed at defending women's rights and eliminating discrimination against them, and at ensuring their full integration into the socio-economic and political-cultural life (subparagraph I).

The State Human Rights Program (State Decree nº 42.209 of 15 September 1997, of the State of São Paulo), establishes, among the measures relating to the protection of women's rights: the development of research and the dissemination of information on violence and discrimination against women, as well as on ways to promote and protect their rights.

**Factors and Difficulties**

The 1990s witnessed intense activities in educational policies in Brazil, as a result of the developments of the 1988 Constitution and of the new international scenario, which led to the challenge of expanding supply and obtaining quality gains while, at the same time, seeking to curb the use of public funds. These reforms were not exclusive of Brazil and Latin America. On the contrary, they constituted an international movement that also raised education to the condition of fundamental strategy to reduce economic and social inequalities at national and international level.

Three institutions in Brazil are responsible for collecting/consolidating statistics on education: the Ministry of Education (MEC), through the National Institute of Educational Studies and Research (INEP) and the State-level Secretariats for Education, which have teaching institutions as their major collection target; and the Brazilian Institute of Geography and Statistics (IBGE), which carries out household surveys. The Ministry of Labor, through the Annual Lists of Social Information (RAIS), also consolidates information on teachers and professors who work in the formal market. The survey carried out by the Ministry of Labor is restricted to business companies (in this case, teaching institutions).

As a result of their peculiarities, each one of these institutions uses specific collection instruments, defines a specific target-population and, therefore, produces results that are not necessarily identical. For example, while the statistics presented by IBGE refer to students, the ones collected by MEC refer to enrollments; the number of enrollments and students may not be identical. Likewise, the variables selected to characterize each of the units might also diverge.

Statistics on education in Brazil have improved, especially in this present federal administration. International recommendations (OECD, UNESCO, and UNICEF, for example, together with the women's movement) have insisted, in past years, on the need to have educational statistics disaggregated by gender (Bonino, 1998). This approach, which had been historically adopted by IBGE and MEC, has been expanded: for example, information on gender and color/race has also been included in recent instruments for the assessment of students' performance.

The country therefore relies on a rich and complex collection of statistical information on literacy, schooling, school attendance, enrollments, course completion, types and quality of teaching institutions, students' success/failure, results in nationwide tests, teacher development, and teachers included in the economically active population. Nonetheless, the dissemination of data disaggregated by gender, especially those relating to the Educational Censuses under the responsibility of INEP/MEC, is rather precarious and far beneath the rich collection, thereby hindering the follow-up of the reforms introduced in recent years.

Despite the fact that the illiteracy rate has decreased, it is still high in Brazil: 26.6 percent in 1985 and 15.7 percent in 1999 in age group five years and older; 21.2 percent in 1985 and 13.0 percent in 1999 in age group seven years and older (1985 and 1999 PNADs).

Comparison of the data collected from the 1872 Census to the 1999 PNAD on male and female illiteracy shows an evolution that was almost perfectly parallel until the 1940s, when the convergence becomes outstanding (Table 27).

**Table 27**

**Overall population and number of illiterate (in age group five years and older) by year and gender. Brazil, 1872 to 1999.**

| | Men | | | Women | | |
|---|---|---|---|---|---|---|
| Census | Overall Population | No. of Illiterates | % | Overall Population | No. of Illiterates | % |
| 1872 | 5,123,869 | 4,110,814 | 80.2 | 4,806,609 | 4,255,183 | 88.5 |
| 1890 | 7,237,932 | 5,852,078 | 80.8 | 7,095,893 | 6,361,278 | 89.6 |
| 1920 | 15,443,818 | 10,615,039 | 68.7 | 15,191,787 | 11,764,222 | 77.4 |
| 1940 | 20,614,088 | 12,890,56 | 62.5 | 20,062,227 | 14,571,384 | 70.6 |
| 1950 | 25,885,001 | 15,881,449 | 61.3 | 26,059,396 | 17,397,027 | 66.7 |
| 1960 | 35,059,546 | 18,666,352 | 53.2 | 35,131,824 | 20,106,008 | 57.2 |
| 1970 | 46,331,343 | 21,562,078 | 46.5 | 46,807,794 | 22,968,325 | 49.1 |
| 1980 | 59,123,361 | 24,209,755 | 40.9 | 59,879,345 | 24,945,292 | 41.6 |
| 1985* | 56,541,266 | 15,048,308 | 26.6 | 58,076,361 | 15,426,630 | 26.6 |
| 1991 | 64,085,268 | 15,921,527 | 25.8 | 66,198,134 | 15,658,961 | 25.0 |
| 1999* | 70,885,513 | 11,426,735 | 16.1 | 74,622,926 | 11,404,609 | 15.3 |

Source: 1872, 1890, 1920, 1940, 1950, 1960, 1980, and 1991 Censuses; 1985 and 1999 PNADs.

* Excluding the rural population of the Northern region.

The gender differentials remained relatively high until 1940 (in the order of eight percent) to the detriment of women and kept decreasing from then on, even considering that it was also from 1950 on that the number of women in the overall population surpassed the number of men (possibly as a result of improvement in childbirth and post-childbirth conditions).

Intensification of the women's schooling process, which started in 1940, contributed to enhance the percentage reduction in the number of illiterate in the country in that decade. The profile of female illiteracy has become virtually identical to that of male illiteracy: women and men from low-income strata, black and Indigenous people living in the rural area of the country's Northeast face the most difficult barriers to literacy (Rosemberg & Piza, 1995).

The greater access of women to education and their improved school achievement are reflected in literacy rates. At present, the percentage of literate women exceeds that of men: 84.7 percent among women and 83.9 percent among men in age group five years and over. (Source: 1999 PNAD).

The differences between male and female literacy rates are perceived only with regard to age: in age group 15 to 19 years, which includes the highest number of literate in the country, women display higher rates than men (97.3 percent and 94.7 percent respectively); in age group 50 years and older – which includes the least literate segment, literacy rates among men are higher than among women: 73.1 percent and 68.0 percent, respectively. (Source:1999 PNAD).

The better rates of female literacy in the younger population may be explained by women's greater access to and higher achievement in school. The highest male literacy rates in the older population may be regarded as an inheritance from the past, associated to the current lack or insufficiency of literacy programs aimed at and suitable for the adult and elderly female population.[93]

In the formal education system in Brazil the gender differential in the population of students is not sharp, it affects the different ages and schooling stages in different ways, and is more evident in the progression of the school life than in specific barriers to access.

Women account for 51.3 percent of age group five years and older, and for 50.5 percent of students in this age group (1999 PNAD). Therefore, the schooling rate among men is slightly higher than among women (35.6 percent and 32.5 percent, respectively, in age group five years and older). This means that the occurrence of school dropout in age group five years and older, in percentage terms, is slightly less frequent among men. On the other hand, the average schooling of women exceeded that of men in 1996 and showed more impressive gains in the past decade, although, in the case of both men and women, the level still is very low level. (Table 28).

**Table 28**

**Average schooling in age group five years and older by year and gender. Brazil.**

| | *Years* | | | | |
|---|---|---|---|---|---|
| Gender | 1960 | 1970 | 1980 | 1990 | 1996 |
| Men | 2.4 | 2.5 | 3.3 | 5.1 | 5.7 |
| Women | 1.9 | 2.4 | 3.2 | 4.9 | 6.0 |
| TOTAL | | 2.4 | 3.3 | 5.0 | 5.9 |

Sources: 1960, 1970 and 1980 Demographic Censuses; 1990 and 1996 PNADs (apud IPEA/PNUD).
Note: excluding the rural population of the northern region in 1990 and 1996.

[93] DI PIERO, 2000, apud, ROSEMBERG, 2001.

The explanation for the apparent contradiction between these two indicators and their evolution in the period – schooling rate and average school years – results from differentials in the progression in the school life of men and women. Indeed, the school progression of women is more regular than men's, forming a slightly flattened and less selective educational pyramid, a trend that increased in the 1990s. (Table 29).

**Table 29**

**Distribution of students in age group five years and older by educational level and gender. Brazil, 1985 and 1999.**

| | *Gender /year* | | *Gender /year* | |
|---|---|---|---|---|
| | Men | | Women | |
| Educational level | 1985 | 1999 | 1985 | 1999 |
| Pre-school | 7.7 | 9.4 | 7.3 | 8.6 |
| Basic | 79.4 | 70.1 | 77.9 | 66.8 |
| Secondary | 8.5 | 15.0 | 10.5 | 18.2 |
| Higher | 4.4 | 4.9 | 4.3 | 6.4 |
| Total* | 100.0 | 100.0 | 100.0 | 100.0 |

Sources: 1985 and 1999 PNADs.
* Including those for which there is no information about the educational level.
Note: excluding the rural population of the Northern region.

The educational flow displays an equivalent bottleneck for both genders resulting from school failure and dropout/expelling, which, however, is more uneven in the case of men. On the average, it takes a Brazilian man/woman 10.4 years to complete the eight grades of basic education. This translates into an efficiency rate of 0.78 (MEC/INEP, 2000a, p.82).

The grade-age gap is less intense among women than among men in both the racial and household income segments (Rosemberg, 2001). The inter-racial comparison shows that the gap among black men/women (including mulattos) is wider than among white men/women. However, the gap among black men is wider than among black women. The gap among white men, in turn, is larger than among white women. Surveys have shown that black women, in virtually every age group, display better educational indicators than black men. Likewise, white women display better educational indicators than white men (Barcelos,1999).

In a given school year, the number of women that complete the basic, secondary, and higher levels of education is higher than the number of men. "Among those that complete the basic level of education, 53 percent are women and 46.4 percent are men. The same phenomenon occurs in secondary education: 58.3 percent of graduates are women and 41.5 percent are men. The female hegemony is even sharper in higher education – 61.4 percent of all university graduates are women" (MEC/INEP, 2000a, p.5).

A slightly higher percentage of women attend supplementary courses: women represent 50.4 percent of students attending basic education supplementary courses and 51.4 percent of students attending secondary education supplementary courses (PNAD, 1999). This could indicate both an over-representation of women in the age group concerned (gender ratio) and an active search for education on the part of women, which is also evidenced by another indicator: the percentage of female students attending private universities is slightly higher.

In summary, the slightly higher proportion of male students mentioned in the beginning of this topic, seems to result from the fact that they move at a slower pace, since it takes them longer than it takes women to tread the same educational path.

An analysis of the increase in the gross schooling rates of men and women in the 1985-1999 period, having the increase in the male and female population under control, suggests that the educational system in Brazil could be ensuring men a relatively greater access to education, and a relatively higher ascension to women. If confirmed by other more accurate studies, this trend should be associated to an over-representation of women in the private higher education network (Table 30).

**Table 30**

**Growth rates (difference %) between 1985 and 1999 by selected educational indicators and gender. Brazil.**

| *Indicators* | *Growth rate** | |
|---|---|---|
| Age group (5 years and older) | Men | Women |
| Total | 25.4 | 28.5 |
| Urban | 37.2 | 40.0 |
| Rural | -5.1 | -5.5 |
| Literacy (5 years and older) | | |
| Total | 43.3 | 48.2 |
| Urban | 49.4 | 54.1 |
| Rural | 19.8 | 23.0 |
| Students (5 years and older) | | |
| Total | 51.4 | 50.2 |
| Pre-school | 84.1 | 78.4 |
| Basic education | 34.9 | 28.9 |
| Secondary education | 167.2 | 159.9 |
| Higher education | 69.9 | 123.4 |
| Schooling (10 years and older) | | |
| Total | 30.8 | 33.9 |
| Population without up to one year of schooling | -15.9 | -18.8 |
| 4 years | 8.2 | 9.9 |
| 8 years | 76.9 | 76.8 |
| 9 to 11 years | 102.2 | 133.3 |
| 12 years and up | 73.9 | 125.8 |

Source: 1985 and 1999 PNADs.
Note: excluding the rural population of the Northern region.
* growth %: total 1999 – total 1985/lower total X 100.

This means that there is an indication, which should be further studied, that public educational policies in contemporary Brazil could not be equalitarian or be privileging women, as intended by the previously mentioned report (MEC/INEP, 2000b). On the contrary, they display signs of different trends for men and women (Rosemberg, 2001).

If women face lower barriers or have more energy than men to achieve higher schooling levels, the Brazilian educational system still shows a strong tendency towards the gender segmentation in fields of education. This means that, once in school, women tend to take propaedeutic courses, while men choose professional courses. In higher education, on the other hand, a certain polarization persists between Humanities and Social Science, which are more feminine, and Physical and Technological Sciences, which are more masculine.

Three trends mark the distribution of men and women across the educational fields: the gender differentiation tends to occur as early as the educational system will allow; it remains relatively stable throughout the school levels; there is no indication that this gender specialization will disappear, despite the fact that it is less evident in certain professions (Rosemberg & Pinto, 1985).

According to the Professional Education Census (MEC/INEP, 2000a, p. 1), women represent only 39.3 percent of all students enrolled in Professional Education, i.e., in courses aimed at the labor market. In addition, gender segregation may be noticed, through the professional education areas.

Data from the Exames Nacionais de Cursos (ENC) administered in recent years show the persistence, in the 1990s, of university courses with a high predominance of men (civil, electric and mechanical engineering) and others with a predominance of women (dentistry, journalism, languages and literature, and mathematics), and yet others with a balanced trend: business administration, law, medicine and veterinary medicine. The trend seems to indicate a greater feminine interest in careers that were previously male, rather than the other way around. However, the data collected still need to be further refined. (Table 31).

**Table 31**

**Percentage of graduates that took the ENC-99 by area, age and gender.**

**Brazil, 1999.**

| | *Age and Gender* | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | Up to 24 | | 25 to 29 | | 30 to 34 | | 35 and older | |
| Field of study | M | W | M | W | M | W | M | W |
| Business Administration | 40.9 | 54.5 | 33.0 | 28.6 | 13.1 | 9.3 | 12.6 | 7.2 |
| Law | 42.1 | 57.4 | 25.3 | 19.6 | 13.0 | 9.2 | 19.7 | 13.9 |
| Civil Engineering | 47.0 | 56.3 | 39.3 | 35.5 | 7.6 | 6.0 | 6.0 | 2.2 |
| Mechanical Engineering | 42.7 | 51.5 | 43.0 | 40.5 | 10.3 | 4.3 | 4.0 | 31.7 |
| Chemical Engineering | 50.0 | 60.1 | 40.7 | 36.6 | 6.7 | 2.1 | 2.1 | 1.1 |
| Journalism | 54.3 | 67.3 | 28.5 | 23.2 | 9.3 | 5.7 | 7.9 | 3.7 |
| Language & Literature | 27.5 | 40.4 | 29.4 | 26.0 | 20.2 | 14.3 | 22.9 | 19.3 |
| Mathematics | 28.2 | 41.5 | 32.3 | 26.2 | 18.0 | 13.9 | 21.4 | 18.5 |
| Medicine | 60.8 | 67.2 | 34.5 | 29.7 | 3.2 | 1.2 | 1.4 | 1.3 |

Source: DAES/INEP/MEC – ENC/99 (www.inep.gov.br, launched on 15 January 2001 at 6:20 p.m.).

Contemporary educational reforms have led Brazil to introduce systematic and comprehensive assessments of school competences. The results of these evaluations show some variation by gender, in keeping with the pattern of developed countries (such as USA, Canada and France): women tend to obtain better results in language tests, while men do better in mathematics and sciences. However, these results are not consistent throughout the school life, and should be interpreted with care since, as we have seen, the socio-economic, racial and age composition of the group of men and women, in a given school grade, is not the same.

In conclusion: the educational system in Brazil is similar, although not identical, to that of developed countries. On the one hand, we see a slightly higher progression of women in school, associated to continuance of the male-female separation among educational branches; on the other hand, we see an interrupted and uneven school progression of women and men from lower social and racial segments which is slightly sharper among men.

Changes in the situation of gender differentiation by fields of education lie beyond the scope of educational policies, for they also seem to result from socialization patterns of gender, media, family, religion and peers, in addition to the strong gender segregation of the labor market (Rosemberg, 1994; Bruschini, 1998). Therefore, recommendations to encourage a heterodox professional development in school for both male and female students, in such a highly segregated labor context, will be of little effectiveness if the trends of the other socializing environments and of the labor market remain unchanged. On the other hand, a more democratic access to quality education is the duty of educational policies that entail, essentially, acknowledgment of the real value of the teaching profession, a preponderantly female profession, i.e. performed mainly by women.

The educational system still is female territory: whether as teachers, employees or specialists, women account for over 80 percent of the labor force in education (Batista & Codo, 1999, p. 62). The teaching profession is still one of the major niches of women's inclusion in the labor market: in 1980 teaching accounted for eight percent of the entire female economically active population (Rosemberg, 1994); in 1991, that percentage stood at 12 percent (Bruschini, 1998).

However, the small changes implemented between 1980 and 1991 did not change the pyramid: men are under-represented in those educational levels that involve dealing with children and adolescents, and over-represented in higher education, thereby evincing a strong gender discrimination. Up to the 4$^{th}$ grade of basic education, teachers are only required to have completed secondary education and their salaries are incredibly lower than those of professors in higher education.

The labor market for the teaching profession presents salary differences among the different levels of teaching and between men and women. Nevertheless, the latter tended to decrease in the inter-Censuses period, possibly as a result of the gender composition by teaching level, of the average improvements in the basic training of teachers, and of the salary policy adopted in the public educational system.

In basic education, the higher the participation of women among teachers, the lower the salary average. There is also a sharp difference in the average salary by teaching level (the younger the student, the lower the teacher's salary). (Table 32).

**Table 32**

**Average salary of teachers by physiographic region and teaching level. Brazil, 1997.**

| *Region* | *Teaching Level* | | | |
|---|---|---|---|---|
| | *EI** | ***EF 1ª a 4ª* | *EF 5ª a 8ª* | ****EM* |
| Brazil | 419.48 | 425.60 | 605.41 | 700.19 |
| North | 322.01 | 360.77 | 586.37 | 735.46 |
| Northeast | 195.00 | 231.17 | 372.41 | 507.82 |
| Southeast | 587.00 | 613.97 | 738.57 | 772.09 |
| South | 464.96 | 460.12 | 594.44 | 683.03 |
| Central-West | 573.64 | 447.55 | 584.20 | 701.79 |

Source: MEC/INEP (1997).
* EI: Pre-school and literacy classes.
** EF: basic Education.
*** EM: Secondary Education.

It may therefore be concluded that the low salaries paid to pre-school and basic education teachers (who make up 3.6 percent of the formal female labor force) contributes to maintain the sharp differential in the remuneration of male and female workers in Brazil. This is, undoubtedly, a gender discrimination trend that still prevails in the Brazilian educational system: as an important niche in the female labor market, the educational system – both public and private – ends up by reproducing gender discrimination by paying low salaries to professions that are associated with and mainly exercised by women.

The teaching profession is an example, although not an isolated one, of gender discrimination, which persists in the labor market. Despite the amazing increase in women's levels of schooling and their impact on the improvement in the level of schooling of the Economically Active Population, women's salaries are still lower than men's with the same level of schooling (Bruschini & Lombardi, 2001).

The National Human Rights Program (Brazil, Presidency of the Republic, 1996), and the educational reforms introduced in the 1990s implemented three items from the agenda of the women's movement in the field of education, with variable impacts: the inclusion of sex education/orientation in the school curriculum; the elimination of sexism from the school curriculum, especially from textbooks; and the expansion of early childhood education as a way to care for and educate the children of working mothers.

A protocol of cooperation signed in 1996 between the Ministry of Education (MEC) and the National Council on Women's Rights (CNDM/MJ), establishes that: *"The Ministries of Justice and Education undertake to cooperate in the sense of ensuring that the educational process will be an efficient instrument to eliminate all forms of discrimination against women, by promoting the recognition of their dignity, equality, and full citizenship. Fulfillment of the commitment was translated into two lines of action to be developed by the Ministry of Education: I) incorporating into the curricular program of the 'TV Escola' (Distance Education) themes that promote the recognition of the equality of rights between men and women; II) considering non-discriminatory contents with regard to women as one of the criteria for the selection of textbooks to be purchased by and indicated to primary an secondary schools".* (Brazil, Presidency of the Republic, 1996 apud Beisiegel, s/d, p.17).

Following up on the implementation of the first action in the protocol is a task that still remains to be fulfilled. However, the Ministry of Education has in a way gone beyond the limits of this commitment, by including *Sex Education* among the transversal themes in the National Curricular Parameters (PCN) in Basic Education (Brazil, MEC, 1998). The chapter on *Sex Education* devotes three pages to the contents on *Gender Relations*, although the issue is briefly mentioned in other transversal themes (such as the *Labor and Consumption* theme).

Despite the low profile accorded to *Sex Education*, the explicit commitment to the development for citizenship and respect for diversity are seen in the Introduction to the National Curricular Parameters (PCN), where it is stated that basic education should prepare the student to take a stand *"against any form of discrimination based on differences related to culture, social class, belief, gender, ethnicity, or other individual and social characteristics."* (Brazil, MEC, 1998).

Although criticized in parts – for example, the trend to value the heterosexual model of family and sexuality (AUAD, 1999) – the PCNs introduce, for the first time ever, in an official document of national scope, a lay vision of sex education to students in basic education. Regrettably, the theme has not been included in other educational levels.

As for textbooks, the selection strategies introduced by the Ministry of Education seem appropriate merely to capture rude and adult expressions of sexism and racism (Beisiegel, s/d). Very few studies have analyzed more subtle changes.

A diachronic research (1975 and 1995) on gender discrimination in child and adolescent literature shows that no change has occurred in the general representation of male and female characters in that period: male characters are always more frequently represented and continue to take on a relative outstanding position on the fictional and social planes; female characters take on a relative outstanding position in family relations. However, there has been a decrease in the intensity of discrimination (Nogueira, 2001).

It is also worth mentioning that surveys and interventions in this field occur more frequently in basic education, and neglect the extensive editorial production for higher education.

Early childhood education was included on the agenda of the Brazilian women's movement as a complementary "guardianship" alternative to maternal care, particularly through the demand for day-care centers. As far as early childhood education is concerned, the 1985-1999 period may be divided into two sub-periods: the first one before 1996, when there was an intense mobilization in the Brazilian society to legitimate this educational level; the second, from 1996 on, which corresponds to recent reformulations of national priorities focused on basic education; this resulted in some inattentiveness to child education.

In the field of legislation, special mention should be made to the 1988 Constitution and the 1996 LDB. It was the Brazilian Constitution of 1988 that, for the first time in Brazilian history, accorded the child the right to extra-family education in the form of assistance in day-care centers and pre-schools. Also for the first time in Brazilian History, the 1996 LDB included day-care centers in the educational system. As a result, the educational administration began to control day-care centers and pre-schools. In addition, their objectives were defined, their programs of study were established, and the minimum training required for their professionals specified. Their portion of municipal budgets and their targets within the National Education Plan were also defined.

Despite the serious problems detected in educational statistics regarding this educational level, there was a significant increase in the number of enrollments in the 1986-2000 period: from 4,177,302 in 1986 to 6,012,240 in 2000 (a 43,9 percent increase). This amazing increase is only relative, to the extent that there is still a high number of lay teachers working in early childhood education, and that the poor quality of the equipment is still a fact (Rosemberg, 1999).

This area deserves special attention, to the extent that today's economic situation, by encouraging the decrease in the role of the State, threatens rights about to be consolidated. It is feared, for example, that a decrease may be determined in the supply of full-time early childhood education, which is an indispensable condition for the mothers of small children to stay in the labor market.

In addition, there are signs of a revitalization of maternal-oriented ideologies – which reduce women to their dimension as Mothers – in recent documents developed and circulated by the Ministries of Education and Social Security and Welfare (Rosemberg, 2001).

*Article 11*

***States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:***

***(a) The right to work as an inalienable right of all human beings;***

***(b) The right to the same employment opportunities, including application of the same criteria for selection in matters of employment;***

***(c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and re-training, including apprenticeships, advanced vocational training and recurrent training;***

***(d) The right to equal remuneration, including fringe benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the assessment of the quality of work;***

***(e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;***

***(f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.***

***2. In order to prevent discrimination against women on the grounds of marriage or maternity, and to ensure their effective right to work, States Parties shall take appropriate measures:***

***(a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity-leave, and discrimination in dismissals on the basis of marital status;***

***(b) To introduce maternity-leave with pay or comparable social benefits without loss of former employment, seniority or social allowances;***

***(c) To encourage provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular by promoting the creation and development of a network of child-care facilities;***

***(d) To provide special protection to women during pregnancy in types of work proven to be harmful to them.***

***3. Protective legislation relating to matters covered by this article shall be reviewed periodically in the light of scientific and technological knowledge, and shall be revised, repealed or extended as necessary.***

**Legislative Measures**

**Federal Constitution**

. The Constitution of 1988 is marked by the principle of gender equality and condemns all forms of racial discrimination. The principle of equity between men and women is provided for, particularly, in the specific chapter on family, labor and property. The Constitution ensures pregnant women, job stability, maternity-leave, the right to day-care centers and to a nursing period. The Constitution of 1988 ratified most of these rights, changed some and included others. At present, its Chapter II on social rights establishes as rights of all workers: protection against arbitrary dismissal or against dismissal without just cause; unemployment insurance; severance-pay; minimum wage; non reducible wages; thirteenth salary, based on the full pay; normal working hours not exceeding eight hours per day; paid

weekly leave; annual vacation with remuneration at least one-third higher than the regular salary; a minimum of thirty days advance notice for dismissal; alleviation of employment-related risks through health, hygiene and safety rules; occupational accident insurance; retirement pension; and recognition of collective job-oriented agreements and covenants, among others.

Next, a short description of some legislative measures relating to the enforcement of labor laws and of the Brazilian Constitution of 1988; laws that have been enlarged or regulated in the course of the past two decades, with the aim of demonstrating the road that has been taken by the Brazilian government during the period in which the Convention on the Elimination of All Forms of Discrimination Against Women has been in force. A cross interpretation with data on the inclusion of women in the labor market that will be presented further down reveals the gap between legislation and the actual daily practice in the labor market.[94]

**Federal Legislation**

*Within the Scope of the Labor Code (CLT)*

Dating from the 1940s, the Brazilian Labor Code guarantees several rights to workers who have formal work contracts or bear official working papers. With regard to female workers, the Labor Code has adopted, since its inception, a protectionist approach. Based on principles such as female frailty, the defense of morality, protection of the progeny, women's natural vocation to family affairs, and the complementary character of women's salary, the Labor Code was based on the concept of a patriarchal family headed by the man, and aimed at protecting working women in their role as mothers. As a result, it imposed a series of restrictions on female labor. The critical reassessment of the rights of working women has been one of the topics on the agenda of feminists since the 1970s, having culminated in the 1980s with the demands of several groups of women; some of these demands were met in the Constitution of 1988. On the one hand, some of the protectionism that imposed limitations on women's labor, such as the prohibition of night, dangerous or unhealthy work, was eliminated. These restrictions now apply only to persons under 18 years of age. On the other hand, taking into account the biological differences between the sexes and understanding motherhood as a social function, the new Charter maintained the maternity-leave without loss of job or salary, having extended it to 120 days; established the paternity-leave of five days after the child's birth, and proposed free assistance to the children and dependents of workers of both sexes, from birth to age six, in day-care centers and pre-schools. The period of entitlement to day-care centers was increased and extended to include rural workers and domestic servants. We have listed below some of the most important regulations implemented in the 1990s:

*Legislation implemented after the 1988 Constitution*

In the post-1988 period, the National Congress passed new laws which were responsible for important changes:

- **Law 8,861 of 25 March 1994** gives new wording to Law 8,213 of 24 July 1991 and ensures women the right to maternity salary. To those women entitled to special insurance, it guarantees the right to a maternity salary of one minimum wage, provided they can corroborate having performed rural activities, even if these have been only sporadic, in the twelve months that preceded the beginning of the benefit (article 39, single paragraph). Article 71 of Law 8,213 establishes that the maternity salary should be paid to the insured employee, as well as to free-lance workers, domestic servants, and those covered by special insurance, in accordance with the provisions of the single paragraph of article 39, for 120 days, during the period ranging from 28 days before childbirth to the date of

[94] Here we shall be using, especially, data from available sources, particularly data from the IBGE, the Ministry of Labor and other sources, which express the impact of social and economic policies on the labor market. Most of the information presented here have been collected from an extensive research and analysis of statistical data performed in the course of two decades by Cristina Bruschini and, more recently, with the participation of Maria Rosa Lombardi, the findings of which have been published in articles and books. Data displayed on the Table are available in the Database on Women's Work (http://www.fcc.org.br). The information on legislative and executive measures was taken from the websites of the Ministry of Labor and Employment and of the National Council on Women's Rights (Ministry of Justice).

childbirth, according to the situations and conditions provided for in the law with regard to protection of motherhood. In its single paragraph, the same law establishes that the specially insured and the domestic servants may apply for the maternity salary up to ninety days after childbirth.

- **Law 9,029 of 13 April 1995** forbids the adoption of any discriminatory and restrictive practice for the purpose of access to a job relationship, or its continuation, by reason of gender, origin, race, color, marital status, family situation or age, with the exception of the situation of protection to minors provided for in subparagraph XXXIII of article 7 of the Federal Constitution (article 1).

The requirement of medical tests, examinations, reports, or any procedure related to sterilization or pregnancy confirmation, as well as the inducement and instigation to genetic sterilization and the promotion of birth control are typified as crimes in article 2 of Law 9,029/95, which also subjects perpetrators to one to two years of confinement, in addition to a fine.

In the case of discriminatory dismissal, the law ensures the employees the right to be re-admitted with full compensation for the entire period of time in which they were away from work, through payment of the due remuneration adjusted for currency devaluation plus legal interests, or payment of twice the remuneration corresponding to the period of time in which they were away from work, adjusted for currency devaluation plus legal interests (article 4).

- **The National Human Rights Program (Federal Decree n° 1.904 of 13 May 1996),** which is currently being revised and updated, has the objective, among other things, of implementing, in the medium and long term, measures to protect women's jobs. The Program proposes the following actions, among others:

  - In the medium term: to regulate article 7, subparagraph XX of the Federal Constitution, which provides for the protection of the labor market for women trough specific incentives; to encourage the generation of statistics showing salaries, workloads, working environments, occupational diseases, and women's labor rights;
  - In the long term: to define governmental policies and programs at federal, state and municipal level for the purpose of implementing the laws that ensure equal rights between men and women at al levels, including health, education, professional training, work, social security, rural property and credit, culture, politics, and justice.

- **Law 9,799 of 26 May 1999,** seeking to correct the distortions that affect the access of women to the labor market, included rules for the protection of women's work into the Labor Code (CLT). In article 373A, Law 9,799 prohibits: publishing or ordering publication of job advertisements ("Want ads") containing reference to gender, age, color or family situation, except when the nature of the activity to be performed publicly and notoriously so requires (subparagraph I); using as the reason for the refusal of employment, promotion or dismissal from work based on gender, age, color, family situation or pregnancy criteria, except when the nature of the activity is publicly and notoriously incompatible (subparagraph II); considering sex, age, color or family situation as a determining variable for salary purposes, professional development and opportunities of professional progress (subparagraph III); requiring proof, of any nature, of sterilization or pregnancy tests for admission into, or permanence in the job (subparagraph IV); preventing admittance into private companies by adopting subjective criteria regarding the application for or the passing of entrance examinations by reason of sex, age, color, family situation and pregnancy (subparagraph V); and subjecting women workers to body search by the employer or his employees (subparagraph VI).

Article 309b of the Labor Code, as amended by Law 9,799 of 26 May 1999, establishes that vacancies in job-oriented training courses offered by governmental agencies, by the employers themselves, or by any professional teaching institution, should be offered to employees of both sexes.

With the aim of implementing projects intended to stimulate female work, article 309 of the Labor Code, as amended by Law 9,799 of 26 May 1999, establishes that legally established entities may enter into partnership with

professional development institutions or labor union organizations, as well as enter into covenants for the purpose of developing joint activities.

Article 373-A, single paragraph, of the Labor Code, as amended by Law 9,799/99, provides for the possibility of adoption of temporary measures aimed at establishing policies on equity between men and women, especially for the purpose of correcting the distortions that affect the professional development, access to work, and the general working conditions of women.

Article 391 of the Labor Code establishes that a woman's marriage or pregnancy constitutes no just cause for dismissal. Furthermore, the single paragraph of said article establishes that the woman's right to her job should not be restricted, by reason of marriage or pregnancy, in regulations of any nature and collective or individual labor bargaining. In this regard, Law 9,029/95 prohibits employers from requiring pregnancy test and proof of sterilization for the purpose of admission into or permanence in the job.

Article 392, paragraph 4 of the Labor Code, as complemented by Law 9,799/99 ensures the woman, during pregnancy, the right to be transferred to another position when her health conditions so require, as well as to return to the previous position. It also ensures her the right to take leave from work for the time needed to attend at least six medical appointments and to have other complementary medical examinations.

Article 393 of the Labor Code establishes that, during maternity-leave, women are ensured the right to full pay; in the case of variable salaries, the amount to which they are entitled during the maternity-leave is to be calculated on the basis of the average in the last six months of work. Article 395 of the same legal instrument establishes that, even in case of non-criminal abortion, women shall be ensured a two-week remunerated rest, with the right to return to the position held before the leave of absence.

Upon her return to work, the woman shall be entitled, during regular working hours, to two special periods of rest in order to nurse her child, as provided for in article 396 of the Labor Code.

Finally, under article 399 of the Labor Code, the Ministry of Labor shall award a certificate of merit to employers who stand out for organizing and maintaining day-care centers and institutions to protect pre-school age children. In this regard, a qualitative survey is to be carried out, as it is a known fact that only large industries offer day-care centers or pay a day-care center allowance to their employees. A benefit which, however, is restricted to the child's first six months of age.

- **Law nº 10.244 of 27 June 2001,** still with regard to amendments introduced into the Labor Code, revoked article 376 of this legal instrument, which permitted, only in "exceptional cases of *force majeure*" the extension of normal working hours to a maximum of twelve hours, with an increase in the hourly salary at least 25 percent over the normal hour payment.

**State Constitutions**

Virtually all State Constitutions[95] adopt the provisions of articles 7 and 39 of the Federal Constitution, with reference to civil servants.

Maternity-leave is provided for in almost all State Constitutions, except for the following: the State Constitution of Alagoas, which deals indirectly with the theme by providing for the protection of motherhood in the chapter on social security; the State Constitution of Mato Grosso do Sul, in which maternity-leave is provide for only with regard to Armed Forces employees, thus leaving the State Governor yet to provide for workers under the single juridical system, and for career plans for civil servants; the State Constitution of Espírito Santo, which mentions, in

[95] Acre, Amapá, Amazonas, Bahia, Goiás, Minas Gerais, Maranhão, Mato Grosso, Pará, Paraná, Pernambuco, Piauí, Rio de Janeiro, Rio Grande do Norte, Rio Grande do Sul, Rondônia, Santa Catarina, São Paulo, Sergipe, and Tocantins.

general terms, the guarantee of the social rights provided for in the Federal Constitution; and the State Constitution of Roraima, which does not mention any of the rights listed in the Federal Constitution. The same applies to paternity-leave, except for the Constitution of the State of Ceará, which provides only for maternity-leave.

The specific protection of the labor market for women, which is provided for in article 7, subparagraph XX of the Federal Constitution, is mentioned in twenty State Constitutions and in the Organic Law of the Federal District. Excepted from this list are the Constitutions of the states of Ceará, Mato Grosso do Sul, Paraíba and Roraima. The same applies to the prohibition of dissimilar pay, positions and admission criteria by reason of gender, age, color or marital status.

The Constitutions of the states of Amapá, Goiás, Pará, Pernambuco, Piauí, Rio de Janeiro, Sergipe, and Tocantins extend to the adoptive mother some of the rights granted to the biological mother such as, for example, maternity-leave.

The Constitution of the state of Alagoas prohibits dismissal or transfer, without just cause, based on political and ideological reasons or on any form of discrimination. The pregnant civil servant is ensured the right to be transferred to another position, when so recommended, without loss of remuneration and salary and of other benefits of the original office or position. This provision is also found in the Constitutions of the states of Bahia and São Paulo, as well as in the Organic Law of the Federal District.

The Constitution of the state of Ceará, when dealing with civilian and Armed Forces employees, prohibits any form of discrimination, by reason of marital status as well, in the access to courses and examinations aimed at promotions in the military career. It includes, among the rights of urban and rural workers of states and municipalities, free assistance to their children and dependents, from birth to age six, in day-care centers and pre-school facilities. It also establishes that, in public and private institutions with at least thirty women, adequate facilities shall be provided, where mothers can assist and protect their children during the nursing period. This provision is also contained in the Organic Law of the Federal District, which provides for assistance, in day-care centers and pre-school facilities, to women's dependents under seven years of age, preferably in facilities of the very institution to which they are linked or, where this is not possible, in a location close enough to enable nursing during working hours in the first twelve months of the child's life. The Constitution of the state of Amazonas establishes that companies with more than 100 employees that enjoy state tax and financial benefits, and companies with more than 200 employees shall provide day-care centers to the children of their employees.

Adjustment of the work place to the maternity/work issue is provided for in the Constitutions of the states of Paraíba and Goiás. The Constitution of Paraíba ensures nursing women, provided that they are public servants, a one-fourth decrease in their daily working hours during the nursing period, as set forth by the law. The Constitution of Goiás, in turn, ensures women a thirty-minute break at every three uninterrupted hours of work to nurse their children of up to six months of age.

As for Armed Forces employees, the Constitution of the state of Tocantins distinguishes them from civil servants, for they are ensured only the right to maternity-leave and paternity-leave. This Constitution refers neither to the protection of the labor market for women, nor to the prohibition of dissimilar salaries.

In actual practice, the provisions regarding the establishment of day-care centers and pre-school facilities afford working women compatibility between work and motherhood. It is important to emphasize, however, that these provisions should also apply to working fathers.

The Constitution of the state of Goiás also provides for training in development and professional courses without gender discrimination, in any field or sector.

The Organic Law of the Federal District establishes that private companies and public agencies located in the Federal District that discriminate against women in their selection, hiring, promotion, professional development and

remuneration procedures, or by reason of marital status as well, shall be punished with administrative sanctions, as set forth by law. Said sanctions apply to private companies and public agencies that demand medical documents for the purpose of controlling pregnancy and sterilization. The Constitutions of the states of Amapá and Bahia, in turn, clearly prohibit the requirement of proof of sterilization and pregnancy test.

Some criticism goes to the Constitution of the state of Rondônia, which ensures civil servants who are mothers, guardians or persons responsible for raising and protecting physically and mentally disabled children that are undergoing medical treatment, the right to a fifty-percent decrease in their weekly workload, without loss of remuneration. It is understood, however, that the responsibility for raising children should be shared by both parents. The right should, therefore, be extended to men in the same situation. Provisions such as this one, although moved by good intentions and rather forward in terms of contents, are discriminatory in that they discriminate against men with regard to this right. They contradict the principle of equity and are therefore unconstitutional, besides contributing to the perpetuation of gender roles by delegating only to women the responsibility for the children and the burden of raising them.

**International Conventions**

*Convention on the Protection of Motherhood*

It is necessary to emphasize that the 1919 Convention on the Protection of Motherhood (ILO Convention nº 3), to which Brazil is a party, includes the right to maternity-leave, nursing breaks, and payment of medical benefits, in addition to prohibiting the dismissal of pregnant and nursing women.

In 1998 ILO decided to revise the Convention for the purpose of reformulating it, allowing countries that had not ratified it to do so. The new Convention (nº183) was closely watched by Brazilian women, who feared that the new instrument might include changes contrary to the interests of working women (Rea,2000).

With regard to work and maternity-leave, Convention 183 is farther-reaching, since it extends the right to all working women, including those engaged in "atypical jobs". Duration of maternity-leave has been extended from 12 to at least 14 weeks, and in the Recommendation (an optional instrument that offers countries some guidelines), it has been extended from 16 to at least 18 weeks; the compulsory six-week post-childbirth leave has also been assured, as also was the right to return to the same or to an equivalent position upon return from the leave of absence. Nursing conditions have also been improved on through the establishment of one or more daily breaks, or a reduction in the normal working hours. Nursing breaks should count and be paid for as working hours. Duration of the maternity-leave may be extended, where appropriate.

Among the losses, Marina Réa (2000) points out: there is less meticulousness in the protection of dismissal, as a result of pre-established exceptions; the amount of the benefits has been restricted to "two-thirds of the previous remuneration, at least"; the amendment on day-care centers and areas for nursing and collecting milk was not approved; and, finally, paternity-leave was not granted.

**Additional data on the impact of the Labor Law on female workers**

It is well known that the Federal Constitution prohibits differences in salaries, functions and admission criteria by reason of gender, age, color or marital status; it proposes the protection of the labor market for women through specific incentives, and ensures domestic servants virtually all the rights accorded to other workers, as well as their inclusion into the Social Security system. Therefore, it is defined as the most important instrument to eliminate any form of discrimination against women. (1988 Constitution of the Federative Republic of Brazil, article 7, Chapter II).

However, more elements are needed to indicate if these rights are actually being assured to women. The present report gives some indication in this regard, based on the formalization of female labor.

In Brazil, the market protected by labor laws has varied in size between 55 percent and 56 percent of the overall market, with sharp regional disparities (Bruschini, 1995). The information obtained through the Ministry of Labor's RAIS, discloses another aspect of regulated work, the number of positions in the formal segment of the economy. The most protected parcel in the labor market, which is traditionally represented by formal work contracts duly registered, has suffered a reduction in the decade under analysis. In 1990, 59 percent of the overall number of workers were formally employed; in 1995, the number was reduced to 55 percent, having fallen to 54 percent in 1998. When these proportions are disaggregated by gender, it becomes clear that men have been more severely penalized than women for, if 61 percent of all male workers were formally employed in 1990, this number fell to 56 percent in 1995 and to 54 percent in 1998. Among women, these figures are 55 percent, 54 percent, and 53 percent, respectively.

According to Ministry of Labor data covering the 1988-198 period, the streamlining of formal jobs in the private sector led to a decrease, for both sexes, in the weight of the type of contract governed by the Labor Code. As a result, the number of formal links with the public service, which is typical of careers in public administration, became more significant among formal jobs. Thus, in 1988, 87 percent of male jobs were governed by the Labor Code and only 8 percent by the Public Servant Act; in 1998 the proportions were 83 percent and 15 percent, respectively. Among female jobs, in turn, the number of positions governed by the Labor Code decreased significantly in the period – from 78 percent to 68 percent. At the same time, the public sector, a traditional employer of female labor, had an important expansion: the number of jobs in the public administration increased from 16 percent of the overall number of formal jobs held by women in 1988 to 31 percent in 1998.[96]

As a result of the decrease in the number of formal jobs, the social protection provided by the National Social Security Institute (INSS), which had expanded its coverage in the 1985-1990 period, decreased sharply in the 1990s, especially as regards women. The decrease in social security contributions occurred with regard to both sexes, in all economic sectors, in general. The exception, just in the case of men, was the agricultural sector, in which the trend towards greater formalization of jobs occurred from the 1990s on, with the new provisions introduced in the 1988 Constitution. In the case of women, the losses in the 1990-1995 period were significant in the industry and commerce sectors, but were lighter in traditional female sectors, such as social work and public administration, both of which displayed a high level of contribution from the very beginning of the period under analysis.

Nevertheless, the coverage provided by the social security protection system is rather precarious in the country, both in view of the insignificant amount of the benefits paid to retired workers and pension beneficiaries, and of the extension of these benefits to the mass of workers. Just to give an idea of this distortion, in 1995 the National Social Security Institute assisted only 8,000 domestic servants and rural workers with the maternity-salary (FIBGE, 1996 Statistical Yearbook of Brazil, table 2.87).

**Governmental Actions**

Discrimination against women in the labor market should have been eradicated, but the rights and guarantees provided for in the 1988 Constitution and in the labor legislation itself have not been fully respected. As a result, there has been a mobilization of movements of women and scholars, as well as of non-governmental organizations, towards the adoption of actions intended to eliminate every form of discrimination.

We have listed below some of the most recent actions indicating the main efforts on the part of the State to fulfill the commitments undertaken by the Brazilian government to international organizations to eliminate all forms of discrimination against women.

[96] BRUSCHINI, Cristina, LOMBARDI, Maria R. *Banco de Dados sobre o Trabalho das Mulheres*. Série Mulheres e Mercado Formal de Trabalho. Fundação Carlos Chagas. [http://www.fcc.org.br]. 1998.

➢ **Implementation of Convention 111 against discrimination in the labor market**

A survey carried out in the website of the Ministry of Labor (http://www.mte.org.br) detected that, in 1994 the Brazilian government replied to an accusation submitted to ILO by workers' representatives, regarding the non-fulfillment of Convention 111 on discrimination in respect of employment and occupation. The accusation was based on labor market data, which pointed out the differences in remuneration between men and women, and between white and black workers. In June 1995, during the 83rd International Labor Conference, the Brazilian government officially admitted to the existence of this form of discrimination, and requested technical cooperation from ILO to implement the commitments it had undertaken upon ratification of Convention 111.

The Ministry of Labor program for the Implementation of Convention 111 was launched in 1995. Activities developed within the scope of the Program focused mainly on raising awareness about discriminatory practices in the labor market, through the permanent dissemination of the concepts and principles of Convention 111, and of successful experiences regarding concrete actions aimed at promoting equal opportunities.

The State Secretariat for Human Rights of the Ministry of Justice has cooperated in the implementation of Convention 111 since May 1996, when the National Human Rights Program was created.

Administrative Ruling nº 604 of 1st June 2000 established, within the Regional Secretariats for Labor, Centers for the Promotion of Equal Opportunities and Elimination of Discrimination, which were charged with coordinating actions to eliminate discrimination in relation to employment and occupation.

➢ **Program to Eliminate Discrimination in Relation to Employment and Occupation**

Through a decree law of March 1996, the federal government created, within the scope of the Program to Eliminate Discrimination in Relation to Employment and Occupation, a Working Group to Eliminate Discrimination in Relation to Employment and Occupation (GTEDEO), a tripartite group coordinated by the Ministry of Labor that is expected to design a program of actions to eliminate discrimination in employment and occupation. The group is formed by government representatives, as well as by workers' and employers' representatives. GTEDEO strategies for action comprise: including the theme on *discrimination in relation to employment and occupation* in governmental programs/projects; encouraging debates about the theme at governmental and civil society level; disseminating experiences on diversity; identifying and proposing studies and research on the theme; encouraging the development of multiplying agents; and developing a program to promote equal opportunities.

The Program to Eliminate Discrimination in Relation to Employment and Occupation proposed the inclusion of the theme *Discrimination* and of Convention 111 in the Working Groups on the National Employment System.

It was also requested that the statistical analysis of the labor market (RAIS – Annual Listing of Social Information) included the gender and color perspectives in surveys. Administrative Ruling nº 1.740 of 26 October 1999, determined the inclusion in RAIS forms and in the General Register of Employed and Unemployed Workers/CAGED, of informative data on the race and color of employed workers, **in the race/color field** adopting, for this purpose, the classification used by the Brazilian Institute of Geography and Statistics (IBGE).

Another executive measure was the development and implementation of the National Professional Development Program (PLANFOR), the main focus of which is the gender and race issue (Vogel, 2001). The Program aims at privileging those individuals that are more vulnerable to discrimination in the labor market. In this regard, Resolution nº 194/98 of the Deliberative Council for the Worker's Support Fund (CODEFAT) defined the priority population for projects funded by the Fund (FAT).

The "Women, Education and Labor" Protocol was also established in partnership with the National Council on Women's Rights (CNDM) of the Ministry of Justice.

➢ **National Council on Women's Rights – Strategies to Eliminate Discrimination and Poverty**

One of the most important strategies for action of the National Council on Women's Rights (CNDM) has been eliminating the poverty that affects a significant part of the Brazilian population, especially women. In this regard, CNDM proposes the creation of mechanisms that can ensure the equitable participation of women in the employment and income generation process, the access of women to social policies of universal character, and the implementation of special programs aimed at frail or vulnerable groups. These strategies include the support for and promotion of employment – and income – generation mechanisms, as well as the development of programs for assistance, in day-care centers, to children of working and poor mothers, in age group zero to six years, from both urban and rural areas, including special programs of assistance to disabled children. CNDM has also supported the Women's Permanent Working Group (GTPM) and the GTEDEO, for the purpose of proposing, implementing and monitoring public policies in the Labor area. Furthermore, it has promoted a permanent dialogue with the National Institute of Colonization and Agrarian Reform (INRA), the **National Foundation for Indigenous People** (FUNAI), the Ministry of Labor, the Secretariat for Rural Development, and the National Welfare Council, among others. Other action strategies include: encouragement to the promotion of qualification courses and professional development projects for workingwomen; studies and surveys within the Institute of Applied Economic Research (IPEA) and the Brazilian Institute of Geography and Statistics (IBGE), with the intent mapping female poverty and monitoring the impact of public policies on the reversal of the discrimination situation; and a campaign of dissemination, among workingwomen, of their labor rights, the mechanisms of access to courts of law, and free legal assistance with regard to the rights of mothers and their children in relation to paternal responsibility.

**Factors and Difficulties**

In the past two decades Brazil went through serious changes of political, economic and social character. The economic environment was particularly confusing between 1986 and 1994, when the country had six different economic currency stabilization plans, namely: Cruzado 1, Cruzado 2, Bresser, Verão, Brasil Novo and Real. All these plans, which were meant to put an end to the inflation crisis, promoted a series of measures that included difficult de-indexation processes and led to five changes in the national currency.

The 1980s may be considered as the decade of social reorganization, after many years under a military regime. However, it was also the decade of slow employment rate growth, increase in the informal labor market, and decrease in the purchasing power of salaries, which had been corroded by inflation. The intense economic recession that characterized the first years of the 1980s changed the growth scenario of the previous decade, and caused increases in unemployment rates and changes in the distribution of the economically active population, which switched from the primary and secondary sectors of the economy to the tertiary sector, the role of which was fundamental to prevent greater drops in employment levels.

From 1994 on, the new economic guidelines and the inception of the Real Plan enabled the control of inflation, inspite of the decrease in the economic growth rate, having fallen from 5.5 percent in 1993 and 1994 to less than 0.2 percent in 1995. The decrease in the economic activity was one of the reasons for the increase in unemployment rates, which then reached unprecedented levels in the country's history. The unemployment rate

measured by the Employment and Unemployment Survey (PED) in the country's most important metropolitan regions[97] jumped from an average of 15 percent in 1994 to an estimated average of 20 percent in 1999 – a 33 percent increase.[98] As a result, in 1999 the average time of search for a new job reached, for example, 52 weeks in the Federal District and 39 weeks in the metropolitan area of São Paulo.

The improvement in income distribution in the country in the first semester of inception of the Real Plan signaled the re-distributive effect of the end of inflation. Since then, income concentration has kept stable at a level high enough to maintain Brazil as one of the countries with the highest income concentration in the world. The economic policy change introduced in January 1999 began to produce positive effects in that same year, indicating a slight recovery in industrial activity, which went on during the year 2000 and the first semester of 2001. On the one hand the improvement led to an increase in the rate of male and female participation in the labor market and, on the other hand, to a decrease in unemployment rates.

It is in this scenario of changes in the Brazilian labor market that we intend to analyze, in greater detail, in this report, the behavior of the female labor force, emphasizing possible forms to eradicate or maintain discrimination against women.

Upon analyzing the behavior of the female labor force in Brazil, the first fact that stands out to attention is the strength of its growth. Until late in the 1990s, the number of women in the economically active population (PEA) reached over 31 million workers. By the end of the decade, the rate of female activity exceeded 47 percent. While the rates of male activity remained at similar levels, in the case of women they increased significantly between 1985 and 1990, as well as in the following years. One should, however, be careful when interpreting the increase in the female labor force from the 1990s onwards, since part of this increase was caused by the expansion of the labor concept, which, since 1992 has included self-consumption activities, family production, and others that, until then, had not been considered as labor. As these activities have always been performed by women, the effects of the new methodology affected them in a special way, whereas the rates of male activity remained unchanged in the period. The new methodology, however, has not yet advanced to the point of including the domestic activity, performed mostly by housewives, and which is still classified as economic inactivity.

[97] Monthly survey carried out by the Inter-union Department of Statistics and Socio-economic Studies (DIEESE) and the State System of Statistical Data Analysis (SEADE) consortium.

[98] If the IBGE Monthly Employment Survey (PME) were used, the rates would increase for some 5 percent in 1994 to an estimated 8 percent in 1999 – an estimated increase of 60 percent. The concept of unemployment used in the Employment and Unemployment Survey (PED) performed by the DIEESE/SEADE consortium is more comprehensive than that used by the Monthly Employment Survey (PME) carried out by the IBGE: in addition to measuring open unemployment, as the latter does, the PEDs also take account of unemployment disguised by discouragement and precarious work. Additional information on the concepts used in the two surveys may be found on-line at http//www.dieese.org.br and www.ibge.gov.br.

Table 33

***Women and men in the labor market: Economic participation indicators***

***– Brazil –***

| Gender and year | | *PEA (million) | Activity rates | Percentage in the PEA |
|---|---|---|---|---|
| Women | | | | |
| | ***1985*** | 18.4 | 36.9 | 33.5 |
| | ***1990*** | 22.9 | 39.2 | 35.5 |
| | ***1993*** | 28.1 | 47.0 | 39.6 |
| | ***1995*** | 30.0 | 48.1 | 40.4 |
| | ***1998*** | 31.3 | 47.6 | 40.7 |
| Men | | | | |
| | ***1985*** | 36.6 | 76.0 | 66.5 |
| | ***1990*** | 41.6 | 75.3 | 64.5 |
| | ***1993*** | 42.9 | 76.0 | 60.4 |
| | ***1995*** | 44.2 | 75.3 | 59.6 |
| | ***1998*** | 45.6 | 73.6 | 59.3 |

*PEA – Economically Active Population

Source: Database on Female Labor. Series Women in the Labor Market: large numbers. http://www.fcc.org.br.

The significant increase in women's activities – one of the most important changes that occurred in the country since the 1970s – resulted not only from the economic need and the market opportunities offered in specific situations, but also, in great part, from the demographic, cultural, and social changes that have occurred in the country and affected Brazilian women and families. The sharp decrease in the fertility rate[99] has set women free to move on to the job market, especially in the country's most developed cities and regions. The expansion of schooling and of the access to higher education enabled the access of women to new job opportunities. Finally, changes in cultural patterns and in the values related to women's social role, which have been strengthened by the impact of feminist movements since the 1970s, as well as by the increasing presence of women in the public scene; such changes have altered the constitution of female identity, which is becoming more and more oriented towards productive labor. The consolidation of so many

[99] Fertility rate dropped from 4.5 children per woman in 1980 to 2.5 in 1991 (IBGE, 1994). Statistical Yearbook of Brazil, 1994. RJ:IBGE, 1994. In 2000 (IBGE, 2000) the average fertility rate in the country dropped to 2.33 children per woman. As a result of the decrease in fertility and mortality rates, the Brazilian population is now older: the average age increased from 21.7 years, according to the 1991 Census, to 24.2 years in 2000. The historical series indicates a decline in the overall fertility rate, with different degrees of intensity in the various regions and age groups. Women start their reproduction life at 22 years of age, on the average, and age-group 20 to 24 years concentrates the higher fertility percentage: 30 percent in urban areas and 27 percent in rural areas. The fertility rate varies a lot according to schooling level. Therefore, among women without any schooling the rate reaches 5.0 whereas among women with more than 12 years of schooling the rate stands at 1.5 (BEMFAM, PNDS, 1996). In view of the population-aging trend, public policies aimed at avoiding social exclusion in senior years have also become necessary.

changes is one of the factors that could explain not only the increase in female activity, but also the changes that have occurred in the profile of the female labor force.

Nevertheless, the constant need to combine professional and family roles, which depends on a complex association of personal and family features, restricts the availability of women for work. The marital status and the presence of children, associated with the age and schooling level of the workingwomen; the characteristics of the family group, such as the life cycle (developing families with small children, mature families, adolescent children, older families, etc.) and the family structure (conjugal family, family headed by women, family expanded by the presence of other relatives, etc.) are factors that always pervade women's decision to enter the labor market and stay therein, although the economic need and the availability of jobs play a fundamental role. The important thing to bear in mind is that the work of women depends not only on the market demand on women's needs and qualifications to meet such demand, but also on a complex and constantly changing combination of the aforementioned factors, which, and this should be stressed, do not affect the movements of male labor.

As shown on table 31, although female activity has expanded in all age groups, the most significant increases have occurred in older groups. This trend began in the 1980s and gained impetus in the 1990s. In 1998, the highest activity rate, above 66 percent, was found among women in age group 30 to 39 years, followed by age group 25 to 29 years (64 percent). However, women between 40 and 49 years of age have also displayed a significant activity rate – 63 percent, thereby showing that the labor market has become more favorable to accepting older women.

**Table 34: Activity rates by age and gender, Brazil**

| *Age group and gender* | 1985 | 1990 | 1993 | 1995 | 1998 |
|---|---|---|---|---|---|
| **Men** | | | | | |
| *10 to 14 years* | 26.5 | 24.3 | 28.1 | 26.4 | 21.6 |
| *15 to 19 years* | 73.3 | 71.8 | 72.2 | 68.8 | 63.6 |
| *20 to 24 years* | 92.5 | 92.1 | 91.1 | 90.5 | 89.5 |
| *25 to 29 years* | 97.2 | 96.2 | 95.8 | 95.2 | 94.5 |
| *30 to 39 years* | 97.4 | 96.9 | 96.5 | 96.3 | 95.8 |
| *40 to 49 years* | 93.9 | 94.5 | 94.7 | 94.5 | 92.9 |
| *50 to 59 years* | 80.9 | 82.3 | 82.3 | 83.6 | 81.5 |
| *60 years and older* | 45.2 | 46 | 50.5 | 49.4 | 47.5 |
| *Total* | **76** | **75.3** | **76** | **75.3** | **73.6** |
| **Women** | | | | | |
| *10 to 14 years* | 12.2 | 10.6 | 14.9 | 14.4 | 11.4 |
| *15 to 19 years* | 41.7 | 41.4 | 45.4 | 44.1 | 41.6 |
| *20 to 24 years* | 50.1 | 52.9 | 59.6 | 60.9 | 61.6 |
| *25 to 29 years* | 48.5 | 52.7 | 61 | 62.7 | 64.5 |
| *30 to 39 years* | 49.7 | 54.7 | 63.7 | 66.4 | 66.4 |
| *40 to 49 years* | 43.5 | 49.5 | 61 | 63.5 | 62.6 |
| *50 to 59 years* | 30.3 | 34.5 | 46 | 48 | 46.6 |
| *60 years and older* | 10.4 | 11.5 | 21.4 | 20.4 | 19.1 |
| *Total* | **36.9** | **39.2** | **47** | **48.1** | **47.5** |

Source: Database on Female Labor. Series Women, Labor and Family. http://www.fcc.org.br.

Changes in the age profile of the female economically active population (PEA), which was followed by an impressive increase in the number of working wives (spouse category, table 35), suggests that the responsibility to the family is no longer a hindrance to female labor, as had been the case until the 1970s. On the contrary, there has been a significant increase in the activity rates of wives, which went up from 33 percent in 1985 to 51 percent in 1998. This means that married women are increasingly turning to the job market, possibly moved by the need to complement the household income, or boosted by their high levels of schooling, fewer children, as well as the changes in female identity and family relations.

**Table 35**

Activity rate according to household position and gender – Brazil

| | 1985 | | 1989 | | 1990 | | 1998 | |
|---|---|---|---|---|---|---|---|---|
| ***Position in the Household*** | **Men** | **Women** | **Men** | **Women** | **Men** | **Women** | **Men** | **Women** |
| ***Head*** | 87.8 | 50.0 | 87.6 | 52.0 | 87.5 | 51.2 | 86.6 | 56.4 |
| ***Spouse*** | 75.7 | 32.9 | 78.5 | 36.5 | 80.7 | 37.6 | 83.7 | 51.3 |
| ***Son/daughter*** | 61.1 | 36.8 | 60.1 | 36.5 | 59.2 | 36.2 | 56.8 | 38.2 |
| ***Others*** | 64.4 | 26.2 | 65.2 | 27.8 | 64.8 | 28.1 | 58.9 | 32.2 |
| ***Unrelated*** | 87.9 | 84.5 | 86.4 | 81.3 | 84.7 | 80 | 81.6 | 77.7 |
| ***Total (%)*** | **76.0** | **36.8** | **75.7** | **38.7** | **75.2** | **39.2** | **73.6** | **47.5** |

Source: Database on Female Labor. Series Women, Labor, and Family. http://www.fcc.org.br.

It is therefore possible to state that significant changes have occurred in the offer of female labor. Yet, some factors still hinder women's dedication to professional activity or make them second-class workers, who are always at a disadvantage in the labor market. In the first place, women are still primarily responsible for household tasks, children and family. This represents an overload to those women who also perform economic activities. Whether they are in the labor market or not, women are housewives and perform chores that, although indispensable to the survival and well-being of all, are disregarded and neglected in the statistics, which classify women as "inactive, dedicated to homemaker chores".

Motherhood is undoubtedly the factor that interferes the most in female labor, especially when the children are still young. The responsibility for protecting, caring and raising children in the family restricts women's participation in remunerated jobs, especially if they do not make enough money to cover the costs of outside childcare. However, when the economic need is strong to the extent that it prevents women from being full-time mothers – such as in very poor households or in households headed by women – other arrangements, for example the family network (including older sons/daughters) or neighborhood networks might care for the children of working mothers. According to a survey performed by the SEADE Foundation, in the city of São Paulo, in 1995, 30 percent of the girls in age group 10 to 14 years attended school, cared for their younger brothers/sisters and helped with chores around the house, to the detriment of their study and leisure time (Bruschini, 1997).

The lack of collective mechanisms such as day-care centers (which only assist a very small number of Brazilian children) helps increase the burden of motherhood on women and, in particular, on working women. Campos, Rosemberg and Ferreira (*apud* Bruschini, 1995) have reported that, in metropolitan areas, in 1985, over 78 percent of children between 0 and 6 years of age stayed with their mothers most of the time, and that only 23 percent attended a day-care center or the pre-school. Another survey shows that, in 1989, only 5.1 percent of all Brazilian children in age group 0 to 3 years attended a day-care center and 16.9 percent of children between 0 and 6 years of age attended day-care centers or pre-schools (Brazil, 1994).

More recent information indicates that mothers, including those who go out to work, continue to be charged with caring for young children. According to data from the National Survey on Demography and Health, 23 percent of working mothers care for their children under 5 themselves, 34 percent are helped by relatives, 12 percent by house maids, 4 percent by the husbands, and only 10.2 percent have access to day-care centers (BEMFAM, 1997).

In the time period under analysis, motherhood still affects female professional activities while the children are young. Activity rates regarding women over 15 years of age who have children drop significantly in the case of younger women in relation to the overall number of women of similar age. In 1998, 62 percent of women between 20 and 24 years of age had a job. However, among those with children, the activity rate dropped to 50 percent. In age group 25 to 29 years, the activity rate decreases from 65 percent to 58 percent among mothers. Still, more than half of young mothers are economically active, a fact that represents an important change in the profile of workingwomen in the 1990s. In age group 30 years and older, the activity of mothers is close to that of the overall number of women in the same age group, and so it remains in subsequent age groups.

The high rates of activity among mothers in age group 30 years and older might indicate both their permanence in the labor market – despite the difficulties to conciliate work and motherhood – and a return of women to the job market after their children have grown older. In this case, it may be said that they have returned to the labor market at a relatively young age, since the rates of working mothers increase significantly from age 30 onwards.

**Table 36**

**Activity rates of women with children by age group - Brazil, 1998**

| Age group | Total of women 15 years and older | Women 15 years and older with children |
|---|---|---|
| ***15 to 19 years*** | 41.6 | 37.8 |
| ***20 to 24 years*** | 61.6 | 50.5 |
| ***25 to 29 years*** | 64.5 | 57.7 |
| ***30 to 39 years*** | 66.4 | 64.5 |
| ***40 to 49 years*** | 63.1 | 61.7 |
| ***50 to 59 years*** | 46.7 | 46.5 |
| ***60 years and older*** | 19.3 | 18.9 |

Source: Database on Female Work. Series Women, Work, and Family. http://www.fcc.org.br.

The increasing number of married women with children in the labor market could be regarded, on the one hand, as an indication of the economic pressure that could be forcing such women to look for a job. Since late in the 1970s, the diversification in the consumption agenda, which generated new needs and expectations, the impoverishment of the middle class[100] and the need to bear the costs of education and health, due to the decrease in the quality of public service systems, are all part of this process. However, this increase also resulted from the strong modernization process and the cultural changes that took place in Brazil from the 1970s, which include an increase in the level of education, to which women have had greater access.

Association of the educational level to the participation of women in the labor market is intense and has been mentioned in the literature (Miranda, 1975, Rosemberg et alii, 1982, among others). More educated women present higher levels of activity, not only because the labor market is more receptive to better qualified workers in general, but also because they may perform more pleasant activities that fetch better salaries, which compensate for the expenses with the domestic infrastructure needed in order to leave home and go out to work. As with men, the rate of feminine activity is higher among those with eight years of formal education or more (which corresponds to compulsory primary education). However, women with a university degree (15 years of formal education or more) are the most active, with

[100] See also Bruschini, 1998; Bruschini and Lombardi, 2000.

a rate of 81 percent in 1998, nearly double the female activity in general (47.6 percent, according to table 30). On the other hand, workingwomen, on the average, have more years of formal education than their male colleagues: 29 percent of workingwomen, have more than 11 years of formal education as compared with 20 percent of workingmen. Seen from a different angle, within the employed population, while men have an average of 5.8 years of formal education, the rate among women reaches 6.8 years (FIBGE, Synthesis of Social Indicators/1999, RJ 2000).

**Women's Place in the labor market**

The literature on female labor has shown that, despite the achievements of the past decades, women still face barriers, have the least privileged positions in the economy, earn less than men, and work under more precarious conditions. Some indicators, such as position in the job, remuneration, working hours, working papers, and contributions to Social Security have been used to reveal the greater frailty of female labor vis-à-vis male labor (Abreu, Jorge e Sorj, 1994, Bruschini 1994). Other indicators, such as occupational accidents and diseases, as well as access to qualification are not available in the surveys carried out by IBGE or by the Ministry of Labor, and only occasionally may be found in qualitative surveys, for they have been under-explored in the literature on female labor.

One of the most positive effects of the new methodology adopted by the National Surveys by Household Sampling (PNADs) since 1992 is knowing more clearly the quality of the work performed by women in relation to the work performed by men, either through the introduction of new categories, such as the position held, or through the nature of the work in relation to new indicators that had not been used until then, such as the place where the activity is performed. Unfortunately, the absence of comparable data on previous years hinders a longitudinal analysis in many of these cases.

Information on the positions held by the workers shows that, although nearly 60 percent of the women are formally employed or self-employed, as is the case of 84 percent of all workers, a significant percentage of workers (40 percent) holds precarious positions in the labor market, either as domestic servants,[101] unremunerated workers, or working for their own consumption.

Another evidence of the frailty of female work, as compare to male work, may be found in the information about the place where workers perform their activities. In this case, although more than half of all workingwomen, like their male colleagues, work in stores, car repair shops, or offices, a considerable percentage of women work at home (almost 13 percent) or at their employer's house (almost 19 percent). These figures are much higher than those of male workers in the same situation.

Some features of female occupation in the least favored niches, as shown on the table below, illustrate the precariousness of an impressive portion of female labor. In 1998, over 76 percent of all domestic servants were not formally employed and earned less than two minimum wages. This is, undoubtedly, one of the most underprivileged labor niches, which houses more than 15 percent of the female labor. Most of the unremunerated category is made up of very young and elderly women who work in the agricultural sector, without job guarantee or protection of any kind, and without access to any type of formal labor relation, since they work within the scope of the families. The same thing occurs to women who work for their own or their family support, all of which are to be found in the agricultural sector.

In addition to precariousness, female labor is also characterized by occupational segregation and salary discrimination. With regard to segregation, which has been reported in studies on female labor since the 1970s (see, for example, Bruschini, 1979), it is possible to affirm that the so-called *Women's ghettos* – occupations with a high percentage of women – remained practically unchanged in the 1988-1998 period, according to information from the Ministry of Labor. The following are prominently female occupations – with percentages that vary between 94 percent and 70 percent: seamstress; pre-school and primary education teacher; telephone/telegraph operator; registered nurse

[101] The **domestic servant** category introduced in PNAD as of 1992, refers to remunerated labor and not to the household chores carried out by housewives, which is still included in the surveys as an economic inactivity.

and nursing personnel in general; receptionist; laundress/dry cleaner; and secondary education teacher. In a way, all of these occupations duplicate activities performed by women in their reproductive role, such as caring, washing, ironing, cooking, and teaching. The more restricted work opportunities and the segregation of women in traditionally female occupations contribute to the poor quality of women's jobs.

On the other hand, it is true that, as some surveys have shown, women have conquered new working spaces in the past decades, such as in the financial and banking sector, in managerial positions in state-owned companies (Puppin, 1994 and Segnini, 1998) and in some prestigious professions such as magistracy and medicine (Buschini & Lombardi, 2000). Occupational segregation is responsible for the preservation of a characteristic identified as feminine – non-competitiveness – that contributes to the maintenance of a hierarchy between genders. Maybe its most perverse effect is that it acts upon the income of workingwomen. Since the demand for female labor is not very diversified and the supply is growing, this relation between supply and demand leads to a decrease in women's salaries.

In the period under analysis these two characteristics – low salaries and gender inequality – did not change at all. It is important to emphasize, however, that there has been some progress in the sense that the concentration of female workers in lower income segments decreased between 1985 and 1998. The most positive results, however, were felt in the 1985-1995 period, when there was an increase in the percentages of workers of both sexes in the segments that earned over two minimum wages, followed by a new decrease in the following period and by a new increase in 1998. None of these movements, however, was enough to eliminate salary inequalities between genders. As shown on table 34, although the portion of the employed population earning up to two minimum wages (SM)[102] a month decreased in the period, in 1998 the number of women in this salary bracket (40 percent of men and 47 percent of women) was still substantially high. It is worth emphasizing that in 1985, 41 percent of the employed women still earned just one minimum wage a month (as compared to 23 percent of workingmen). It is also important to mention that the number of workingwomen who admit to being unpaid is still significant. In 1998 the difference in relation to men reached 19 points. Possibly, part of this increase is due to the expansion of the labor concept, which started in 1992, when people who worked at least one hour a week – in this case mostly women – were considered as being employed, even if they only performed production and construction activities aimed at their own support or at the support of their family group.

**Table 37**
**Distribution of employed persons by gender and salary tier – Brazil**

| *Classes of monthly salaries* | 1985 | | 1990 | | 1995 | | 1998 | |
|---|---|---|---|---|---|---|---|---|
| | **Men** | **Women** | **Men** | **Women** | **Men** | **Women** | **Men** | **Women** |
| ***Up to 1 minimum wage*** | 23.1 | 41 | 19.9 | 33.3 | 19.0 | 28.2 | 18.4 | 25.8 |
| ***1 to 2 minimum wages*** | 24.4 | 20.4 | 20.3 | 20.8 | 21.0 | 19.7 | 20.7 | 21 |
| ***2 to 5 minimum wages*** | 25.5 | 15.5 | 29.3 | 21.9 | 28.1 | 18.5 | 29.7 | 21.3 |
| ***Over 5 minimum wages*** | 16.6 | 7.4 | 22.8 | 12.5 | 20.3 | 10.1 | 19.6 | 11 |
| ***Unremunerated*** | 10.3 | 15.5 | 7 | 11 | 10.3 | 22.7 | 10 | 19.9 |
| ***Total ( % )*** | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| ***Million*** | 36.7 | 18.5 | 40.0 | 22.1 | 41.9 | 27.8 | 42.3 | 27.6 |

Source: Database on Female Labor. Series Men's Salaries, Women's Salaries.

[102] In June 2002, the minimum wage in Brazil corresponded to R$ 200.00 or approximately US$ 75.00.

The trend according to which women' salaries are lower than men's, regardless of the economic sector in which they work – has been very much evidenced and discussed in the literature. Data analyzed for the purpose of this report indicate that the situation has not changed. In 1998, in the industry sector, where labor relations are more formally established, while 37 percent of the male workers earned up to two minimum wages, 49 percent of the female workers were in the same salary bracket. In the services provision sector – which employs more women than men – 76 percent of the female workers earned up to two minimum wages, while only 41 percent of the male workers were in that same salary bracket. In the social sector, another niche of female occupation, which includes teaching and health care activities, 41 percent of female workers and 26 percent of male workers were at that salary level. The inferior situation of women in the labor market is also evidenced by the outstanding proportion of unremunerated female workers in agriculture – 81 percent – while 30 percent of men working in the sector are remunerated.

Some argue that there are some reasons why women's salaries are lower than men's. One of them is the fact that women work less hours than men. However, in the normal working hours in the formal sector of the economy – 40 to 44 hours a week – 44 percent of women and 38 percent of men earned up to two minimum wages in 1998, thereby evidencing, once again, the inequality between the remuneration of men and that of women.

Another reason offered to explain the difference in women's salaries is the type of employment relationship, or the position held by the worker in the professional area. This argument, however, cannot be sustained either. The levels of women's remuneration are always lower than men's, whether they are formal employees, domestic servants, self-employed, or employers. In the category of domestic servants – made up mostly of women – while 80 percent of the men – a group of only 300,000 workers – earn up to two minimum wages, among female domestic servants – 4.7 million – the proportion reaches 90 percent. Among the self-employed, the disparity persists: 70 percent of women and 50 percent of men are in that income bracket. (Database on Female labor. Series Men's Salaries, Women's Salaries. In: http://www.fcc.org.br).

Finally, the income based on the educational level reinforces even further the salary discrimination to which women are subjected in the labor market, despite the fact that the level of schooling among women is higher than among men. Among those with the highest level of schooling in both sexes, for example, the discrimination seems to be even more evident: in the group with 15 years of formal education or more, 85 percent of the men and just 67 percent of the women earned more than five minimum wages in 1998.

Upon analyzing the behavior of labor incomes by gender, two trends seem to have been consolidated in the 1990s. The first refers to the overall number of Brazilian workers, without gender differentiation, and indicates a decrease in the number of men and women who earn the lowest salaries, or up to two minimum wages. The second trend refers to the inequality of remuneration between genders in the labor market, the result of different appreciation for the work of men and women. In the 1990s, women continued to earn less than men, regardless of the economic sector in which they acted, the number of hours they worked, their educational level, and the position they occupied.

***Labor Regulations and social protection***

The number of working hours, the formal labor relationship, the time of permanence on the job, and the contribution to Social Security are some of the most important indicators of the quality of women's inclusion into the labor market.

Working papers and contribution to Social Security are indicators of regulation and protection in the job and, traditionally, female labor has been less protected and regulated than male labor. In the group of employed women, however, having their working papers – and, consequently, the possibility of social security protection – has been less common than in the group of employed men. Between 1995 and 1998, the percentages of employed men and women with working papers were fairly similar. This result has probably been influenced by the high number of dismissals that occurred in the 1990s, which affected, particularly, male workers. But it could also be due to the fact that there has been more respect for the labor legislation.

Part-time employment has been very much used in European countries as a strategy to overcome the unemployment issue. Although Brazil did implement a clear policy in this regard during the period under analysis, especially in the first five years of the 1990s, there was a significant increase in the number of persons that worked up to 39 hours a week. Shorter working weeks are more popular among women and their numbers increased in the 1990s, when the proportion of women who worked up to 39 hours a week jumped from 38.7 percent in 1990 to 45 percent in 1998. It is worth recalling that these last figures might have been over-estimated due to the wider larger coverage that has been given to the topic 'employment' in household surveys since 1992. Many workingwomen have probably chosen to work part-time as a strategy to harmonize job and housekeeping. However, as the data have shown, it is also possible that many women just did not have access to better jobs – mostly full-time jobs – which are protected by the labor legislation and pay higher salaries.

Working papers signed by the employer represent one of the most important indicators of formal employment and labor regulation, to the extent that the worker who has such papers is less exposed to possible arbitrariness on the part of the employer with regard to salary level and enjoyment of the labor rights provided by law.

***Discrimination against women in the labor market***

In the course of history, the discrimination against women has been founded on socially established differences based on biological differences. The establishment of a gender division in the labor market has created a hierarchy among the activities performed by men and women. This still affects the form of women's inclusion in the labor market and is one of the modalities that best explain discrimination against women, although the violation of rights is not always clear. It is known, for example, that women are still in disadvantage in relation to men in terms of salaries, positions and working conditions. Although the female labor force in Brazil displays one of the highest growth levels in Latin America, women are concentrated in the service sector and earn less than men. Data from the International Labor Organization (ILO) covering the 1991-1996 period, show that in Brazil the salaries earned by women in sectors other than agriculture corresponded to 72 percent of the salaries earned by men (Bruschini, Lombardi, 2001). It is also known that women tend to concentrate in specific sectors of professional activities, many of which are regarded as female by society (service provision). Motherhood is a decisive factor in women's admittance into and permanence in the labor market, and has an impact on their professional life, since it makes promotion to higher ranks more difficult.

According to Silvia Yannoulas (2001), at least three forms of discrimination may be detected in the labor market: the direct and clear form, the indirect or concealed form, and self-discrimination. The first one refers to direct exclusion by reason of gender, age, color, ethnicity, etc. Conventions such as CEDAW or ILO Conventions nº 100 and nº 111 on equal remuneration and the elimination of discrimination in respect of employment and occupation, in addition to the 1988 Brazilian Constitution itself, hinder, by principle, the exercise and maintenance of this form of discrimination.

However, discrimination can take extremely subtle forms that still pervade Brazilian society. Indirect discrimination, in this case, is concealed by ideas and practices that influence socially accepted behaviors, re-create and reinforce inequalities such as, for example, professional activities with age limitations. Alongside this form of discrimination are internal mechanisms of repression and self-discrimination which, according to Yannoulas (2001), shape up desires, expectations and yearnings in such a way that some educational or professional options may be much more aimed at better career-oriented women than others. To a woman, the internal costs of a teaching career are probably much lower than those of science or engineering.

Yannoulas' definition shows how hard it is to define or establish the degree of discrimination to which Brazilian women are exposed, especially because discrimination is expressed in the social relations that the individuals establish among themselves, and are pervaded by cultural values. An example of that is race discrimination. Although employment discrimination based on color or race is decisively prohibited, the higher emphasis on discrimination of black women has been perceived in several studies on gender discrimination associated with race/color in the labor market, among which are the studies performed by the State Data Analysis System (SEADE), the Institute of Applied Economic Research (IPEA) and the Mobilization of Brazilian Women for the II World Conference against Racism,

which was promoted by the United Nations in 2001.[103] All of these studies stressed the fact that the group most discriminated against is that of black women, who earn less and hold weaker positions in the labor market. According to the SEADE study, the level of schooling would cause the race/color condition to be less discriminated against than the gender condition. An analysis of the different pay rates by hour, gender, race and educational level revealed that, among the educated population, (with complete secondary education or incomplete higher education), in São Paulo, in the year 2000, white men earned R$ 6.29/hour, black men R$ 4.62/hour, white women R$ 4.35/hour and black women R$ 2.92/hour.[104] In any situation, however, black women suffer the most, since they have to carry the burden of double discrimination (Bruschini & Lombardi, 2001).

With regard to the family and household situation of workingwomen, this report on female labor in Brazil has shown that the burden of household activities and, mainly, the care for small children prevent women from competing with men for good jobs under equal conditions. Those women who work, even when they do it in their own homes, are punished by the double work shift. Housekeeping is not even considered as an economic activity. Public mechanisms available to help women with small children are not enough. In this regard, it may be said that there has been some disregard for paragraph 2, article 11, item "c" of the Convention on All Forms of Discrimination Against Women, which provides for the provision of social services intended to allow the parents to combine their obligations and their families, through the establishment of a network of services aimed at assisting the children.

On the other hand, the law ensures women who are formally employed important social rights, such as maternity-leave of 120 days after childbirth, maternity-salary and access to day-care centers, among others. This, however, only applies to workingwomen included in the protected segment of the labor market, in which they are a minority. Although the right to day-care centers in set forth by law, it is known that the services available do not meet the demand. With regard to this aspect of the quality of female labor, it would be of the utmost importance to have more information on the coverage of day-care centers and pre-schools in relation to mothers' labor, as well as data on maternity-leaves and maternity-salaries granted by the Social Security system, associated to the activity sector or the occupation, if possible.

We have seen that the educational level plays a fundamental role in the sense of impelling women towards the good jobs available in the labor market, and also that the female labor force has a higher rate of schooling than the male labor force. However, this does not prevent women from being segregated in traditional occupations and earning less than men. One of the possible reasons for the continuity of this gender discrimination is the concentration of women, since secondary education, in courses that prepare people for occupations, which are not recognized in the labor market as valuable occupations. The greater presence of women in the field of humanities, as compared with the presence of men in the field of sciences, was analyzed in surveys such as those performed by Barroso e Mello (1975), in the 1970s, or Rosemberg et alii (1982), in the 1980s. As for more recent years, the data collected by the Educational Census have shown that women prefer the fields of linguistics, languages, literature and arts (83 percent), human sciences (82 percent), biological sciences (74 percent), and health-related sciences (67.6 percent) (Bruschini & Lombardi, 2001). Their presence has increased in the fields of business administration, architecture and city planning, and law. Even in the field of engineering and technology, a traditionally male niche, the increase in female participation has been relevant, although they are still under-represented in scientific fields which prepare people for more prestigious professions.

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[103] SEADE Foundation/State Data Analysis System. *Women and Work – in search of social equity.* São Paulo: SEADE Foundation, no. 3, mar./2001; AMB/Mobilization of Brazilian Women, CFEMEA/Feminist Center of Studies and Advisory. *Black Women - a picture of race discrimination in Brazil.* Brasilia: CFEMEA, AMB, 2001; IPEA/Institute of Applied Economic Research – *The Labor Market – situation and analysis.* Brasilia, Rio de Janeiro: Labor Ministry, IPEA, no. 13, year V, June/2000.

[104] SEADE, op. cit, p. 21.

The increase in women's participation in the labor market is one of the most important changes that have occurred in the country in the past decades. It resulted from several aspects that are, in a way, contradictory:

- Demographic changes: as a result of the decrease in the number of children, women were free to work;
- Their higher level of schooling improved their credentials to face the labor market;
- Cultural changes related to the role of women in modern western societies have, by recognizing the value of a professional activity, impelled them to the labor market – a phenomenon that affects even those women who might have had a different choice;
- At the same time, middle-class families can no longer do without the economic support of their women. Impoverished since the 1980s, the families have new needs generated by the diversification in consumption, and are pressed by the need to bear the higher costs of the education and health of their children and relatives, due to the precarious situation of the public assistance system;
- Economic needs, the increased number of divorces and of households headed by women have also impelled women towards remunerated activities;
- Meanwhile, women who have always worked in family production or in other unpaid activities have become visible as a result of a more refined concept of work and have also augmented female labor statistics;
- The new group of workingwomen is now made up of older and married women. But their new responsibilities do not exempt them from their family and maternal duties;
- Conversely, whatever their labor situation, women continue to be responsible for multiple chores associated with the home, the children and the family in general;
- For most women, the overlapping of housework with the economic activity, despite the huge importance of the latter to their own survival and the survival of their family, as well as to their autonomy and negotiating power within the family group, represents an enormous overload; and
- It is this very gender condition that puts women in a secondary and discriminatory position in the labor market.

Working women have always been concentrated in activities in the service sector, and their presence in the informal and unprotected labor market has been impressive, either in housework, in self-employment, or in the unremunerated family or household activity. Housekeeping has always been considered as economic inactivity, although it keeps most women busy.

In the formal sector, which is protected by laws that ensures, at least at legal level, important social rights such as maternity-leave and access to day-care centers, workingwomen have had a relevant participation in the service sector, in public administration and in the social area, which includes activities related to teaching, health, and social work. In any of these cases, the unequal position of workingwomen in relation to their male colleagues may be assessed by at least two indicators: occupational segregation, whether horizontal (by offering women a narrower set of employment options) or vertical (by imposing obstacles to their access to higher-ranking positions); and salary inequalities between men and women in any situation, as already described in this report.

Therefore, poorer working conditions, to which one could add lower levels of formal employment and Social Security contributions, as well as lower levels of unionizing, which result in less bargaining power, may be defined as features of the female portion of a sexist and discriminatory labor market regarding women. It is no surprise, therefore, that a precarious and weakened labor force was more sensitive to the evil effects of the new organization of production which occurs at world level, as well as to the successive local economic crises. Although it is important to point out that women have had new employment opportunities and good jobs in certain areas such as financial and banking institutions and in some prestigious professions such as medicine and the magistracy, it is equally important to show that women have been driven away from some of their traditional labor fronts, possibly as a result of effects of the market flexibility on male labor. Workingwomen have lost jobs in the industry sector and yielded their place to men in

the service sector and in the informal sector in general. They have also lost space in the administrative, technical, and scientific areas, among others, which had traditionally been female niches.

The impact of the new structure of production, and of the economic crises of the 1990s on women has driven them away from sectors and occupations in which they had always had an active participation, from large industrial activities to small commercial establishments. The increase in the number of part-time workingwomen may have resulted from this same process, although the same thing has also happened to the male labor force. As for the quality of female labor, however, the information analyzed has shown that, if it is true that women have the worst jobs, there is no indication that this least favored niche has increased. On the contrary, the number of female domestic servants has remained nearly unchanged, although there has been a decrease in the rate of unremunerated female work. In this regard, the precarious conditions of female labor possibly resulted more from the pressure of male workers who have been expelled from better jobs, than from a specific move against women. On the other hand, in all of the situations appraised, and taking account of the legislation in force, which, at least in thesis, ensures equal rights to men and women in the labor market, the data reveal the maintenance, to some degree, of unequal gender standards in the composition of the labor market and in the quality of the jobs available to women.

*Article 12*

***1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.***

***2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services wherever necessary, as well as adequate nutrition during pregnancy and lactation.***

**Legislative Measures**

The Constitution provides for equality between men and women and grants special protection to women's pregnancy, labor, and motherhood. It establishes that *"health is a right of all and a duty of the State and shall be guaranteed by means of social and economic policies aimed at reducing the risks of illness and other hazards and at the universal and equal access to actions and services for its promotion, protection and recovery."* (Article 196). By providing for the protection of the family by the State, article 226, paragraph 7 establishes the free choice of family planning and the duty of the State to provide educational and scientific resources for the exercise of this right.

The great juridical-institutional advance was the definition of social security as an integrated set of actions aimed at guaranteeing the rights relating to health, social security and welfare – a consistent tripod with a new concept of health seen from the standpoint of social policies and with the establishment of the principles of universal access to health services at all levels; full assistance and community participation in the social control over these actions.

The Organic Laws on Health (Laws nº 8.080 of 19 September 1990 and 8.142 of 28 December 1990) have regulated the constitutional provision by reiterating the principles already established and defining some guidelines such as: financial solidarity; decentralization with emphasis on municipalities; equal assistance without prejudice or privileges of any form; right to information; and preservation of people's autonomy in the defense of their physical and moral integrity. They also establish inter-sectoral committees expected to design policies and programs of interest to health and the implementation of which will involve areas not comprised in the Single Health System (SUS). Resolution nº 39 issued by the National Health Council on 4 February 1993 establishes the Inter-Sectoral Committee for Women's Health.

The administration of SUS is complemented by Basic Operational Rules (NOB) and several other administrative rulings, as well as technical rules issued by the Ministry of Health, as well as by the resolutions of the National Health Council, within the scope of the Central Government. The implementation of health policies is a joint duty of states, municipalities and the Federal District, which are free to manage the system within their territories. Therefore, at state and municipal level, the lack of a federal rule does not prevent matters from being regulated, under the principles of federal legislation. The participation of civil society in SUS implementation and management process is ensured in the National Health Conference, which is held every four years, and in equal representation in the National, State and Municipal Health Councils.

The Federal Constitution, in its article 199, establishes that health assistance is open to private enterprise. The matter was regulated by Law 9,656/98, which provides for the exclusion of obstetric assistance from health insurance, whenever it has not been previously contracted, as well as of reproduction health services, such as artificial insemination. The coverage for newborns is only guaranteed in the first thirty (30) months after birth, incuding neo-natal ICU, continuity of the coverage being permitted if the newborn has been included in the health insurance plan as a dependent, and the health insurance company is forbidden to claim pre-existing disease or injury or to establish grace periods for the child. This guarantee is an advance, as before this law was issued the newborn had no health coverage, unless it had been contracted before his birth. The new law established a Supplementary National Health Council,

consisting of Ministry of Health staff, and a permanent and advisory Health Chamber formed by representatives of several segments, among which are consumers' defense organizations.[105]

The supplementary survey on Health of the 1998 PNAD-FIBGE shows the importance of private health insurance to the population and its regulation by the public power. Some 39 million Brazilians, particularly in urban areas, are covered by such insurance, which comprises outpatient and hospital services, as well as diagnosing and therapeutic tests and examinations. Users of health insurance are persons who have high household income, are included in the labor market and are mostly women who, in general, enjoy good health conditions.

§ 7 of article 226 of the Federal Constitution, which provides for the right of every citizen to family planning, was regulated by Law 9,263/96, which defines family planning as 'a set of actions aimed at controlling fertility that ensures women, men or couples equal rights with regard to starting, limiting or expanding the progeny' (article 2). It also provides for equal access to information, methods and techniques available on birth control (article 4) and guidance to people by means of preventive and educational actions. The legislative procedure to approve this law was slow and difficult, especially with regard to the inclusion of surgical sterilization as a contraceptive method. In 1996, Law 9,263 was approved with presidential vetoes[106] and, in 1997, five years after the Parliamentary Inquiry Committee had concluded its work, it was finally enforced without any vetoes. The set of actions described in its article 3 includes assistance to conception and contraception; pre-natal, childbirth and puerperal care; assistance to the newborn; control of sexually transmitted diseases; and control and prevention of uterus, breast and penis cancer. In its article 10, the law establishes the conditions for voluntary surgical sterilization: "I – in men and women with full legal capacity and persons over twenty-five years of age or with at least two living children, provided that the minimum sixty-day period between the expression of the will to be sterilized and surgery itself be complied with. During this sixty-day period the person will be provided access to fertility control services, including advice by a multidisciplinary team, with a view to discouraging early sterilization's". Surgical sterilization in persons with total lack of legal capacity can only be performed upon judicial authorization regulated by law. A polemical legal issue is the requirement of the express consent of both spouses, in case of conjugal society, for surgical sterilization. This legal imposition contradicts the principle of self-determination of the human person and, in view of the inequalities that still pervade gender relations, might generate a limitation to the woman, who will not be able to make free decisions with regard to her own body. The law establishes that every sterilization should be compulsorily reported and prohibits the requirement of proof of sterilization for the purpose of admission into or permanence in the job. It also reiterates the provisions of Law 9,029/95 and establishes penal aspects: for the performance of surgical sterilization contrary to the law; the failure, by the doctor, to notify the competent sanitary authority of the surgical sterilization performed; to fraudulently induce or instigate the practice of sterilization; and to require pregnancy test for the purpose of admission into or permanence in the job. The penalties imposed on the perpetrator also apply to executives and other responsible persons, as well as to the institution where the fact occurs.

Law 9,797/99 decrees the obligation of the Single Health System (SUS) to perform breast-repair surgery in cases of mutilation resulting from cancer treatment, and recognizes repair surgery as a woman's health issue and not as a mere aesthetic surgery. In turn, Law nº 10.223 of 15 May 2001 provides for the same obligation on the part of private health insurance companies.

Another point that deserves to be stressed with regard to women's health is the issue of abortion, It is typified as a crime in the Penal Code, which provides for just two cases for which there is no punishment: when there is no other way to save the woman's life, and when the pregnancy results from rape. Currently there are 14 bills on pregnancy interruption undergoing examination in the National Congress. The bills are diversified, and propose the regulation of abortion performed by the SUS in the aforementioned cases; the extension of legal benefits in case of fetal malformation; the interruption of pregnancy based on the woman's will and conditioned to the pregnancy period; and elimination of the technical rule of the Ministry of Health that regulates the performance of abortion by the SUS.

[105] Through Provisional Law nº 1.928/99 the Federal Government established the Complementary National Health Agency, aimed at promoting the defense of the public interest in health care.

[106] The President of the Republic vetoed the following articles: 10; 11; single paragraph of art. 14;and 15, all of which provided for surgical sterilization.

There is no national statutory law regulating assisted reproduction and its implications in the various spheres of the Law. Only the ethical and research aspects have been regulated, respectively by Resolution nº 1.358/92 of the Federal Council of Medicine and by the "*Ethical Rule on Research Involving Human Beings*" (Resolution nº 196/96 of the National Health Council. Two bills on the subject are under examination in the National Congress. The lack of federal regulation and inspection may cause problems to women's health and therefore regulation is necessary to be implemented.

**State Constitutions**

State Constitutions provide for the health system in a broad way, and reiterate the constitutional provision according to which health is *"a right of all"*. Some Constitutions guarantee full assistance to women's health, but the major concern of state representatives has been the family planning issue, in view of reports about mass sterilization of women.

| **Themes covered by the State Constitutions:** | **Brazilian States** |
|---|---|
| • Full assistance to the health of women. | • Bahia, Ceará, Goiás, Mato Grosso do Sul, Paraná, Rio de Janeiro, São Paulo, and Tocantins |
| • Full assistance to the health of children and adolescents. | • Acre, Piauí, and Rondônia |
| • Free access to medical tests for the detection of breast and uterus cancer. | • Pernambuco and Tocantins |
| • Family planning/access to the choice of methods without coercion. | • Amapá, Amazonas, Bahia, Espírito Santo, Goiás, Maranhão, Mato Grosso do Sul, Minas Gerais, Paraíba, Pará, Paraná, Pernambuco, Rio de Janeiro, Rio Grande do Norte, Rio Grande do Sul, Roraima, São Paulo, Sergipe, and Tocantins. |
| • Option as to the size of the family. | • Piauí |
| • Prohibition of pregnancy tests and proof of sterilization. | • Amapá, Bahia, and Rio de Janeiro. |
| • Abortion guaranteed by law. | • Amazonas, Bahia, Goiás, Minas Gerais, Pará, Rio de Janeiro, São Paulo, and Tocantins. |
| • Induced abortion not accepted. | • Goiás |
| • Prohibition of experiments harmful to human health involving drugs and contraceptive methods. | • Bahia, Pará, and Roraima |
| • Counseling on Sex. | • São Paulo and Tocantins |

All State Constitutions provide for everyone's right to health. Some constitutions include the right to health among the fundamental rights and guarantees, in addition to providing for the right to health in the chapter on the theme.

Ten State Constitutions[107] and the Organic Law of the Federal District refer specifically to women's health. Worth emphasizing are the provisions of the Constitution of the state of Ceará, which establishes as a duty of the Single Health System to implement and guarantee those actions of the program of full assistance to women's health that meet the specific needs of the state's female population in all phases of the woman's life – from birth to old age.

In addition to full protection to women's health, the Constitutions of the states of Bahia, Goiás, Rio de Janeiro and Tocantins, as well as the Organic Law of the Federal District also provide for special protection to women during pregnancy, childbirth and nursing. The Constitutions of the states of Amazonas, Espírito Santo, Rio Grande do Norte, Rio Grande do Sul, Rondônia, Roraima, and Sergipe restrict the protection of women's health to three phases in their lives (pregnancy, childbirth and nursing) and fail to provide for full assistance to women's health, thus reinforcing the role of procreator of the species that has been historically attributed to women.

Most state Constitutions[108] provide for the right to family planning, with the exception of the Constitutions of Acre, Alagoas, Minas Gerais, Mato Grosso, Piauí, Rondônia, and Sergipe. Most of the Constitutions[109] that deal with the family planning issue establish that it is a free choice of the couple. The Constitutions of Goiás and Tocantins establish that the right shall be exercised by the man and by the woman; the Constitution of Rio de Janeiro establishes that the right to family planning is to be exercised by the woman, the man or the couple, in this order; the Constitution of São Paulo, in turn, determines that the right shall be exercised by the man, the woman or the couple, also in this order. The Constitution of Pará establishes that the right to family planning shall be exercised by the family.

Uses, studies and inspection regarding contraceptive methods are clearly provided for in the Constitutions of the following states: Bahia, Goiás, Pará, Rio de Janeiro, Roraima, Sergipe and Tocantins. Special mention should be made to the Constitution of Bahia, which includes in the chapter on women's rights the encouragement to research aimed at improving and expanding the national production of safe and efficient male and female methods of contraception that are not harmful to human health. It clearly prohibits every and any experiment in human beings involving substances, drugs and contraceptive methods that are harmful to human health and that are neither fully known to the users nor inspected by the public authorities and representation entities. The Constitution of the state of Rio de Janeiro also provides for the possibility of adopting new assistance practices related to the reproduction right, based on the experience of groups or institutions of defense of women's health.

The Constitutions of the States of Amazonas, Bahia, Goiás, Minas Gerais, Paraná, São Paulo, and Tocantins as well as the Organic Law of the Federal District provide for the right to abortion in the cases set forth by law. It is worth emphasizing that the Constitution of Amazonas clearly provides for the free choice of women with regard to motherhood and also for the provision of social, legal, medical and psychological assistance to women by the public health network and by other institutions in case of legal abortion. The Constitution of Bahia not only provides for the right to legal abortion but also for the assistance, in special institutions, to women with unwanted pregnancy. Specialized medical and psychological assistance by the Single Health System (SUS) to women victims of rape is also provided for in the Constitution of the state of Tocantins.

The Constitution of the state of Rio de Janeiro is, undoubtedly, the most advanced one with regard to the abortion issue by providing, in compliance with the principle of respect for the human dignity, assistance to women in case of abortion, whether induced or not, as well as in the case of sexual violence, in special facilities in the services directly or indirectly guaranteed by the Public Power.

Conversely, the Constitution of the state of Espírito Santo places on the same level as criminal practices against the human life: abortion; suicide; euthanasia; genocide; torture; physical, psychological and moral violence that affect the dignity and integrity of the human person.

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[107] Acre, Amapá, Bahia, Ceará, Goiás, Mato Grosso do Sul, Paraná, Rio de Janeiro, São Paulo, and Tocantins.

[108] Amapá, Amazonas, Bahia, Ceará, Espírito Santo, Goiás, Maranhão, Mato Grosso do Sul, Pará, Paraná, Paraíba, Pernambuco, Rio de Janeiro, Rio Grande do Norte, Rio Grande do Sul, Santa Catarina, São Paulo, and Tocantins.

[109] Bahia, Ceará, Espírito Santo, Mato Grosso do Sul, Pernambuco, Rio Grande do Norte, Rio Grande do Sul, Santa Catarina, and the Federal District.

***Parliamentary Inquiry Commissions***

Mechanisms of public administration control by the Legislative Power are common in democratic countries. The Federal Constitution of Brazil provides, for example, for the establishment of parliamentary inquiry commissions (CPIs), which, based on a petition or claim presented by any citizen may be organized by one or both Legislative Houses. The major characteristic of the CPI is its investigative power, typical of judicial authorities, and the ability to start, through the Public Prosecution Service, civil or criminal suits against the perpetrators. In Brazil, CPIs have produced relevant results in the fight against corruption and promotion of public morality, acting as an efficient mechanism for the political solution of cases that are important to the nation.

The Chamber of Deputies has already investigated the causes, in Brazil, of two themes addressed in this report: female sterilization (concluded in 1993) and maternal mortality (concluded in August 2001).

Surgical sterilization has been broadly performed in Brazil as a contraceptive method, despite the understanding that used to prevail before Law 9,263/96 was issued, namely that the practice represented physical harm, with loss of function by the agent. Decree nº 20.931/31 expressly prohibited the practice of surgical sterilization, with or without the patient's consent. In 1991, the Chamber of Deputies set a Parliamentary Inquiry Commission (CPI),[110] the findings of which proved the truth of the reports that there had been mass sterilization in the country, with or without the women's consent, sponsored by governments and international organizations interested in controlling the country's demographic growth,[111] and made easy by Brazilian politicians fishing for votes. In its conclusion, the CPI report emphatically affirmed that women submitted themselves to sterilization for lack of other reversible contraceptive alternatives, and that having the tubes tied was normally performed during caesarean sections. There is currently an attempt to reverse the high rate of caesarean sections caused by mass sterilization. Despite the express recommendation that the Public Prosecution Service investigated the reports of use of sterilization for electoral purposes, to date there is no indication of legal action against the perpetrators. Regulation of paragraph 7 of the Federal Constitution was also slow, having been concluded five years after establishment of the CPI, through the approval of Law 9,263/96, as mentioned above.

A Parliamentary Inquiry Commission was established in 1996 to investigate the high rate of maternal mortality in Brazil, and the charge that the deaths might be related to the lack of pre-natal, childbirth and puerperal care. In August 2001, the CPI concluded that the high rate of maternal mortality was linked to the lack of access to health services, the poor quality of the services available, the lack of information, and the difficult access to contraceptive methods. The victims were, in their majority, low-income women with low educational level, thereby evidencing the socially perverse character of those deaths. The Commission also confirmed the fact that the deaths were not properly reported, what further hinders the adoption of preventive measures.

The difficulties identified by the CPI regarding the reduction of maternal mortality rates were: interruption of implemented programs; incapacity of some municipalities to implement health-care measures; absence of evaluation and control mechanisms on the part of Single Health System managers; lack of professionals in rural areas; the absence of funds, instruments and facilities to provide adequate health-care; lack of family planning services, which leads to clandestine abortions; absence of Maternal Death Committees[112] in many states and municipalities; and the lack of ombudsman services to receive the reports.

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[110] Final report published by the Committee on Citizenship and Reproduction, Supplements CCR 2, as an appendix to Silvia Pimentel's research on "Reproduction Rights and the Brazilian Legal System: Inputs to a transforming political-legal action, 1993, p. 96-111.

[111] According to data from the IBGE, 5,900,238 women had been sterilized until 1986. This figure accounted for 13.8 percent of all women in age group 15 to 54 years.

[112] Created within the Ministry of Health, the Committees on Maternal Death were established at state, regional and municipal level. In the Committees, the government and civil society cooperate to identify, investigate and analyze maternal deaths and suggest measures of intervention.

The final document recommended that the focus on full attention to women's health be reinstated, and recognized that the measures proposed by the Ministry of Health within the Program of Full Assistance to Women's Health (PAISM) adequately covered many of the basic problems: guarantee of funds for the purchase of equipment; organization of transportation logistics and identification of vacancies; inputs; recognition of their worth and training of health professionals, with emphasis on both technical and ethical aspects; broad dissemination of the rights of pregnant women and of risk factors such as sickle cell anemia, malaria, anemia and malnutrition; establishment of ombudsman services; implementation of minimum-income programs for pregnant women; and distribution of free transportation tickets to ensure attendance to pre-natal medical appointments, among others. Finally, it recommended that the National Congress approved bills on the issue of maternal mortality, since they cover themes such as the creation of sex-education programs, the obligation to implement certain health programs and provide medical tests, improvement in the reporting process, and social benefits.

On the legal-normative plane, Brazil has a health model in place that is compatible with the principles of CEDAW, except for the treatment afforded to the issue of abortion, which is still dealt with from the punitive incriminating standpoint rather than from the public health perspective. However, implementation of the health model that exists on the regulations has been slow, and faced by great local difficulties. In addition, the concentration of actions on some specific areas still contradicts the rule of law. However, the State has worked towards decentralization, since it implies sharing in the power, mobilization, permanent and harmonious dialogue among all levels of government, besides the qualification of community leaderships, with a view to the smooth operation of the system.

**Governmental Actions**

The Women's Health Technical Area is part of the Department of Strategic Programmatic Actions of the Ministry of Health, alongside the Children, Adolescents and Workers' Technical Health Areas and the National STD/AIDS, Hypertension and Diabetes Coordinating Committees. It aims at producing protocols and educational material; training human resources; implementing mechanisms to induce the development of policies related to the technical areas; and providing technical and financial cooperation to states and municipalities, in accordance with the guidelines of the Single Health System.

The most important governmental policy on women's health is the Program of Full Assistance to Women's Health (PAISM). This Program, which resulted from the mobilization and organization of the women's movement and the sanitary movement, was implemented by the federal government in 1984, and comprises actions of full assistance to women's health that are not restricted to contraception and pre-natal care, to be implemented in the states and municipalities. The importance of PAISM by introducing the language of women's human rights is unquestionable. It pervaded the legislative process, consolidated important rights for women's health in the 1988 Constitution, and has enabled the organization, discussion and development of new rights based on their original conception.

Another program that has proven very important in the area of assistance to women's health is the Family Health Program. Created in 1994, this Program is a development of the Health Community Agents program launched in 1991, and is meant to reorganize basic health-care by associating the population of a given area to a multi-professional team that privileges preventive actions and provides home assistance, in the intent of ensuring full assistance to individuals and families and guaranteeing reference and counter-reference to hospitals and more complex services, whenever the health condition of the person so requires. Program coverage is still limited, but the results have been positive in small municipalities, where health-care, particularly with regard to women and children is precarious.

Among the priority actions of the Family Health Program established by the National Health Council through Resolution nº 259 of 4 April 1997 are: promoting the health of pregnant women (nursing and pre-natal, labor and puerperal care); nutritional surveillance and education for children and families; educational actions to prevent domestic violence; family planning; climateric and sexually transmitted diseases, AIDS, uterus and breast cancer. This guideline has already been incorporated into the Administrative Rulings that provide for participation of municipalities in the program.

The latest evaluation of the Ministry of Health showed the effectiveness of the Program in the field of reproduction and sexual health: it increased the supply of pre-natal, child care, family planning, and gynecologic assistance and improved the control of hypertension (which has an impact on maternal mortality) and of sexually transmitted diseases. However, the quality of the services is still poor. In the assessment of the Ministry of Health,[113] in the area of pre-natal service, for example, only 14.8 percent of the family health teams have all the resources they need to do their work; this percentage increases to 17.6 if ultrasonography is not taken into account, and to 33.1 without the dispensing of ferrous sulfate. These very low percentages indicate the need of investment in the quality of the assistance provided in family health units. Other challenges for the purpose of reduction of maternal mortality include the access to hospitals at the moment of childbirth and the quality of the health-care, particularly in view of the high rate (60,9%)[114] of deaths associated with direct obstetric causes (eclampsia, hemorrhage, miscarriage/abortion, puerperal infection, post-cesarean pulmonary embolism) and indirect obstetric causes (39.1 percent).

The lack of health professionals in rural areas led to the issuing of Decree nº 3.745/2001, which established the Program for Interiorization of Health Labor, intended to encourage doctors and nurses to settle in needy municipalities, with emphasis on the strategies of the Family Health Program.

The National Health Council, through Resolution nº 259 of 4 December 1997, defined the criteria that constituted pre-requirements for approval of the Program and established, as priority actions, the promotion of pregnant women's health (nursing, pre-natal, labor and puerperal care); nutritional surveillance and education for children and families; educational actions to prevent domestic violence; family planning; climacteric and sexually transmitted diseases, AIDS, uterus and breast cancer. This guideline has already been incorporated into the Administrative Rulings that provide for participation of the municipalities in the program.

From the above-described diagnosis, we will now focus on the main executive measures, by theme:

**Maternal Mortality**

Important actions have been implemented by the management of the Single Health System (SUS) since 1994, for the purpose of reducing maternal mortality, such as: the inclusion of home childbirth in the list of procedures paid for by SUS; re-qualification of midwives and recognition of midwifery as a profession; payment, by SUS, for deliveries performed by obstetric nurses in the public health network; payment, by SUS, of analgesia during childbirth; and gradual increase in the prices of delivery in order to reduce the high rate of cesarean sections, by establishing a maximum percentage of cesarean sections in relation to deliveries per hospital, for each semester up to the first semester of 2000. According to Ministry of Health statistics circulated in the media, the rate of caesarean sections which, in 1998 stood at 32 percent, fell to 25 percent in 2000. However, it is still very high as compared to the 15 percent rate recommended by the World Health Organization.

In addition to the above-mentioned actions, the Ministry of Health has declared the 28 May as the National Day for the Reduction of Maternal Mortality, when assessments are to be performed at all levels of SUS. The Ministry also established, in 1994, the National Commission for the Prevention of Maternal Mortality, an institution of technical- consultative character, and approved, in the National Health Council, resolutions that provide for the compulsory notification of maternal deaths, and the regulation and implementation of abortion services to be provided by SUS as set forth by law.

SUS is implementing state-level reference systems for high-risk pregnancy, a Committee for the Study of Maternal Mortality, a Committee for the Study of Neo-natal Care, a Commission on Hospital Infection, a Service of pre-natal and family planning assistance to women subjected to high-risk pregnancy, with an interdisciplinary team, which includes social and psychological assistance (Administrative Rulings nº 3.016 of 19 June 1998; nº 3.017 of 19

[113] http://www.saude.gov.br/Programas/mulher/operaciona.htm

[114] Data from the research on "Study on the Magnitude of Maternal Mortality in 15 Brazilian cities", performed by Ana Cristina D'Andreatta Tanaka and Lia Mitsuiki, and financed by UNICEF, São Paulo, 1999. Available on the homepage of the Ministry of Health at http://www.saude.gov.br.

June 1998; nº 3.018 of 19 June 1998; nº 3.477 of 20 June 1998; and nº 3.482 of 20 August 1998, all of which were issued by the Health Minister).

The Program for More Humane Pre-natal and Labor Care was established by Administrative Rulings nº 569, 570 and 571 of 1st June 2000, of the Ministry of Health, to be implemented through partnership with the Secretariats for Health of the states, municipalities and the Federal District, so as to perform actions to promote, prevent and assist pregnant-women and newborn babies, by expanding access to these services. The Program comprises full pre-natal care associated with childbirth and puerperal care, in addition to investments in the field of obstetric and pre-natal assistance.

**Prevention and treatment of injuries resulting from sexual violence against women and adolescents:**

In 1998 the Ministry of Health issued a Technical Rule on the "Prevention and treatment of injuries resulting from sexual violence against women and adolescents", in compliance with Resolution nº 258 of 6 November 1997, issued by the National Health Council, article 128 of the Penal Code and the guidelines of Laws nº 8,080/90 (Organic Health Law) and 8,142/90 (Law on the Administration of the Single Health System).

In general lines, the above-mentioned technical rule deals with the issue adequately. The service proposed is not restricted to abortion, since it includes full care of all injuries resulting from sexual violence, with the consequent reduction in abortion rates. The rules also include emergency contraception. In addition, it emphasizes the responsibility of state and municipal administrations in defining the reference units, training teams to provide appropriate care, and evaluating the actions performed. The proposal is for a multiprofessional team, focused on psychological and social assistance to the victims.

Approval of the Technical Rule is the first successful step towards encouraging, guiding and establishing services aimed at this type of assistance. However, the ground is not solid yet. The Minister of Health has received letters from anti-abortion individuals and groups requesting the abrogation of the Technical Rule. Furthermore, Federal Deputy Severino Cavalcanti (PPB/Pernambuco) submitted to the National Congress legislative bill nº 737/98 proposing the deferral of the Technical Rule issued by the Ministry of Health.

**Family Planning**

Law nº 9,263/96 has enabled the expansion of reversible contraception assistance in the public health network, especially in basic health-care programs. The difficulties relate to the lack of reversible contraceptive methods for distribution; the distribution of condoms, which is basically effected by the National STD/AIDS Coordinating Committee; the lack of information on the part of health professionals about the methods; the low coverage of educational actions; the interruption of actions; and the inadequate assistance to the demand for sterilization in public hospitals – where the procedure may only be performed within the period of 60 days from the expression of the will to the surgery itself, and after an educational and informative conversation intended to encourage the use of reversible contraceptive methods.

On the other hand, irreversible contraception, if performed as set forth by law, is an individual right, although a survey carried out by the "Commission on Citizenship and Reproduction" indicates that sterilization still is illegally performed. The survey, which covered 23 out of the 37 hospitals that perform tube tie and vasectomy, shows that many people violate the law by imposing conditions that have not been provided for, such as stable matrimonial union, age above 25, and more than two children in the case of women under 25 years of age. The main argument used in these cases is the possibility of regret, since the method is irreversible. In one of the hospitals surveyed, it was said that the law is not deliberately followed, for the risk of regret.

Voluntary sterilization, which is provided for in Law 9,263 of 12 January 1996 on the right to family planning, applies only to men and women over 25 years of age or with at least two living children, provided that a 60-day period is observed, from the expression of the will to be sterilized and the surgery itself. During this waiting period, the person

concerned should be given access to fertility control services and to counseling by a multidisciplinary team, with the intent of discouraging early sterilization. Sterilization is also permitted when, duly demonstrated in a report written and signed by two doctors, the health of the woman or of the future child are at stake. Sterilization requires the written consent of the person concerned, which should only be signed when the person is fully aware of the surgical risks, possible side effects, the difficulty to reverse it, and the existing reversible contraceptive methods.[115]

There is no specific guideline regarding assistance to adolescents. This fact has raised doubts among the health teams as to the rights of youngsters to have access to contraceptive methods without their parents' consent. However, the Code of Medical Ethics adopts the criterion of intellectual development in the doctor-patient relationship, which expressly provides for respect to the opinion of children and adolescents, the preservation of professional confidentiality, and full assistance, so long as the patient is capable of evaluating the problem and solving it through her own means.

**The AIDS epidemic**

Since 1997 the Ministry of Health has accorded priority to the prevention and transmission of HIV during pregnancy by implementing the following actions: a) recommendation of the HIV test in pregnant women assisted by public health services; b) training of day hospital and basic health-care teams in advisory actions pre- and post-test; and c) therapeutic monitoring of HIV-positive pregnant women and the supply of AZT.

Preventive strategies aimed at reducing the incidence of HIV-related infections are taking into consideration the change in the epidemiological profile, such as the feminization, impoverishment and heterosexualization of the epidemic. However, the interaction between family planning and STD/AIDS prevention services is still insufficient.

**Uterus and breast cancer**

The Ministry of Health has launched nationwide campaigns in partnership with non-governmental organizations for the purpose of combating uterus and breast cancer. The National Campaign of Combat to Uterus Cancer launched in November 1998 produced a significant quantitative effect. Among the 3,263,000 women examined in a six-week period, 53.9 thousand had cancer. In 4.7 thousand of the women the cancer was in advanced stage. However, until mid-1999, many women that had been diagnosed with cancer had not been referred to treatment yet. Despite the impact of the campaigns to inform women, investment in permanent services, which are still insufficient in the public health network, is necessary. A nationwide campaign to motivate breast self-examination was launched in 1996. Since then, the number of procedures performed by the Single Health System in relation to this pathology has increased.

**Judicial Measures**

According to a survey performed by Themis – Legal Advisory and Gender Studies, in March 2000,[116] judicial sentences related to women's health, in addition to being scarce, are not understood from a human rights perspective. Sentences relate to abortion, sterilization, maternal mortality, and health insurance-related issues.

The lawsuits relating to maternal mortality, which are founded on material damage and pain and suffering are mostly based on the Consumer's Defense Code, accepting the thesis of objective liability to guarantee reparation to violation of the consumer's right. It is worth mentioning that these lawsuits are not founded on constitutional and

[115] In this regard, see the study entitled *"Protection of sexual and reproduction rights by means of public civil action"* by Mônica de Melo, mimeo, 2001.

[116] "Reproduction and Sexuality: A Justice Issue". Researcher: Samantha Buglione. Project: Protection and Guarantee of Women's Rights: New Instruments and Mechanisms, carried out by Themis – Legal Advisory and Gender Studies. Support: the Ford Foundation.

international precepts on the human right to health, but rather on the Consumer's Defense Code, under the perspective of consumption relations.

The Judiciary made an important decision in the case of *Schering do Brasil*, a pharmaceutical company that distributed a batch of birth-control pills with no active principle, causing dozen of women to become pregnant. The liability of the company was established on the basis of the Consumer's Defense Code, and the company was sentenced to compensate the women for childbirth expenses.

Decisions about sterilization are restricted to judicial authorization when it comes to having the tube tied in legally incapable women. The decision to grant such authorization is focused on the inconvenience of pregnancy to an incapable person, and not exactly on the sex and reproduction health of such person.

According to Brazilian law, abortion is restricted to the cases of pregnancy resulting from rape (article 128, II) or when it is the only way to protect the woman's life (article 128, I). The use of the Judiciary to minimize the effects of this ruling is a slow process, although some important achievements have been recorded, such as several sentences authorizing abortion in cases of acute developmental anomaly that makes the life of the fetus unfeasible, thereby expanding the causes that exclude unlawfulness. These sentences are based on the woman's mental health in view of the impossibility of the fetus to survive and of her suffering throughout her pregnancy. Although still insufficient, these sentences evidence an advance, particularly in the penal area, which does not accept expansions or restrictions of criminal rules.

As for the State's duty to provide full assistance (both medical and pharmaceutical) to its citizens, there are some solid decisions in the country's courts of law that stem, in their majority, from the claims of chronic patients (AIDS and cancer patients, among others). In the specific case of AIDS, where the prevention and combat groups have their own legal services, the high number of lawsuits has contributed to the implementation, by the government, of a policy on the universal and free supply of medication.

The discussion about the free supply of medication, especially to HIV patients, has gone a long way. There are important judicial precedents issued by the Federal Supreme Court and the Superior Court of Justice,[117] ensuring the supply of medication based on the right to health (art. 196).[118]

The constant refusals of private health insurance companies to provide medical care to persons with chronic diseases has led to questioning the validity of these restrictive provisions in the Judicial Branch, which has recognized abuse on the part of such companies based on the Consumer's Defense Code, and prohibited the restriction of fundamental rights or duties that are inherent to the nature of the contract or that threaten their objective and contractual balance. Reiterated decisions have led to the approval of the already mentioned Law 9,656/98.

The Public Prosecution Service in some states and the Federal Public Prosecution Service itself have performed punctual actions in cases of maternal and newborn deaths in public hospitals, through class lawsuits and inquiries. There is, however, no institutional policy on the issue in place.

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[117] AGRG in RE. no. 271.286-8 RS, j. 12/9/00, Rapporteur: Chief Justice Celso de Mello and AGRG in REext. no. 255.627-1/RS, j. 21.11.00, Rappoteur:. Chief Justice Nelson Jobim. It is worth mentioning the extraordinary appeal – 195.192-3 of Rio Grande do Sul: Distribution of Medication to the Needy. The panel of judges sustained the sentence issued by the State Court of Appeal of Rio Grande do Sul which, based on Sate Law no. 9,908/93, had recognized the duty of the that State to provide free medication to HIV patients who could not bear the costs of such medication without depriving themselves and heir families of the money indispensable to their support. The panel considered that the appealed sentence was based on the state law that regulated article 196 of the Federal Constitution ("Right is a right of all and a duty of the State, guaranteed by means of social and economic policies aimed at reducing the risk of illness and other hazards and at the universal and equal access to actions and services for its promotion, protection and recovery"), disregarding the previous rule. RE 242.859-RS. Rapporteur: Chief Justice Ilmar Galvão, 29.6.99.

[118] Mônica de Melo, *"Protection of sexual and reproduction rights by means of public civil action"*, mimeo, 2.001.

**Factors and Difficulties**

*Demographic and Health Characteristics of the Brazilian population:*

The fast-paced urbanization of the Brazilian population, the implementation of urban health policies (sanitation, preventive hygiene), the advances in the supply of medication, and punctual health-related actions have led to a decrease in the mortality and fertility rates, also to an increase in life expectancy[119] and to a significant improvement in the epidemiological profile of the population. Nonetheless, these facts have not had a very deep effect on the difficult Brazilian situation regarding the simultaneous existence of pathologies that can be controlled and eradicated, and which are typical of poverty and rural life, and other diseases that affect developed urban societies, aggravated further by the pathologies that emerged in the 1990s, such as AIDS and the increase in mortality and morbidity rates owing to external causes associated with urban violence.

The new structure by age-group and demographic situation in Brazil evidences the ageing of the population, with emphasis on the more feminization of seniority[120] and on a "young wave"[121] characterized by the increase within the overall population of age group 10 to 24 years, thereby outlining a new profile in the demand for social policies and health-related actions.

The Brazilian picture is aggravated by marked and still stable socio-economic, gender, and racial inequalities, as well as by regional diversities which, in view of their significance, deserve attention and specific intervention models in order to establish a minimally acceptable balance.

Health-care is an essential element to well being, as well as to the social, economic, and political development of the country. However, many are the restrictions faced by the health system to promote deeper changes in the health conditions of the population. The process of health services decentralization and the multiple actions adopted in the sector as of the mid-1990s have enabled and still enable important improvements in conditions for access. Advances regarding the decisiveness and quality of care are still to be made, but promoting comprehensive changes in morbidity and mortality rates implies implementation of far-reaching inter-sectoral measures in the sense of improving housing, sanitation, nutrition, work and educational conditions. The current situation and the prospects for development in Brazil are conditioned to the serious international structural crisis, which generates the need for a deep economic restructuring that enables development, implements and consolidates the democratic systems, and ensure the reduction of social inequalities.

*Health conditions of Brazilian women:*

In 1998, women's hospitalization accounted for 63 percent of the overall number of hospitalizations in the Single Health System. The main cause for this was childbirth care, followed by diseases associated with the respiratory, circulatory and digestive systems. Infectious and parasitic diseases are the fourth cause of hospitalization,

[119] Life expectation at birth: between 1940 and 1990, life expectancy at birth increased from 41.5 to 67.7 years , i.e., an average of over five years per decade (IBGE, Demographic Censuses). The highest gains in life expectancy occurred in the 1980s, when it increased from 53.5 years in 1970 to 61.8 years in 1980.(Social indicators: an analysis of the 1980s. Rio de Janeiro:IBGE, 1995, p33, table 4).

[120] Berquó, Elza S. and Cunha, Estela M.G.P. (organizers), Female morbidity and mortality in Brazil (1979-1995) , publisher: Unicamp, , 1st Edition, year 2000, page 198.

[121] In the mid-1980s, age group 0 to 4 years was no longer the largest and, in 1995, age group 10 to 14 years had exceeded the two previous groups. With the continuity of the process, in 1998 and 1999 age group 15 to 19 years was at the same level as the previous group and exceeded the first two groups. The other end of the age structure has reflected the slow but continuous increase in the number of elderly and the effects of mortality differentiated by gender. In the 1990s, the female segment of age group 60 years and older varied around 55 percent. National Survey by Household Sampling – comments available at www.ibge.org.br .

followed by diseases of the genitourinary system. Hospitalizations for mental and behavioral diseases occur mainly among women (64 percent).[122]

Fifteen years after the inception of PAISM, an assessment made by the women's movement, especially in the health area, shows that its effectiveness and reach have not been sufficient in view of the needs of Brazilian women. Currently, the women's movement seeks reformulation, using as reference the Conferences on Population and Development (Cairo) and on Women (Beijing). Nonetheless, it is worth emphasizing that the Program, as originally conceived, has not been fully implemented and at present the technical staff has, among its duties,[123] the implementation of actions on pre-natal and labor care, assistance to family planning, prevention of AIDS transmission in women and newborns, and violence against women.

Maternal mortality is one of the most serious health problems in Brazil. Early in the 1990s, the maternal mortality rate reached 114.20 deaths per 100,000 live births. Official data indicate that along the decade there was an important decrease. In the 1995-1997 period it was in the order of 57.17/100,000 and in 1998 the proportion was 40/100,000. Information provided by the Ministry of Health to the Parliamentary Inquiry Commission on Maternal Mortality (concluded in August 2001) indicated that, in 1998, the most frequent causes of maternal death were hypertension (12 percent), hemorrhages (6.7 percent); diseases of the circulatory systems aggravated by pregnancy, childbirth and post-childbirth complications (5.7 percent); puerperal infection (3.9 percent); and abortion (2.2 percent). The abortion issue may be even more important than indicated by this index, since, as it is typified as a crime, it is possible that not all cases are being reported. Among the indirect causes of maternal mortality, the most important ones are anemia, which might lead to hemorrhaging and infection, malaria, hepatitis, heart diseases, and AIDS. Direct obstetric causes account for 60.9 percent, thereby indicating the need for improvement in the access to health services and in the quality of health-care. The actual magnitude of maternal mortality in Brazil is still unknown, as a result both of the lack of records and the poor quality of notification.

Unsafe abortion is another serious hazard to women's health. In 1998 abortion was the fifth cause of hospitalization in the Single Health System network and was responsible for maternal deaths and sterilization due to tube-related causes. The implementation and expansion of abortion services to assist the cases in which abortion is permitted by law, as well as family planning services are both urgent and fundamental to women's health. The exclusion of abortion from the crime list still faces strong resistance, especially in social segments linked to the Catholic Church. The women's movement in Brazil has endeavored to promote progressive projects aimed at revising punitive and repressive laws against abortion, as well as at having the practice of abortion regarded as a public health problem.

Uterus and breast cancer account for 15 percent of all cases of malignant tumors in women. Data from the National Cancer Institute (INCA) related to 1998 revealed that 5.7 million women in age group 35 to 49 years had never had a Pap smear.[124]

The number of HIV-infected women has grown in Brazil. In 1986 there was one infected women for each 16 men in the same situation. Today, the man/woman ratio is in the order of 2/1, and even 1/1 in some regions. The profile of the HIV/AIDS epidemics among women points to a predominance of cases among young people: 40 percent are under 30 years of age, thereby indicating that the infection is being contracted at an early age. On the average, the female population affected by the disease is younger and less educated than the male population: about half of them have less than eight years of formal education. Late diagnosis and the consequent delay in the implementation of therapeutic measures lead to a higher rate of morbidity and mortality among HIV-positive women and to a lower rate of survival after the disease has been diagnosed. Despite the free distribution of medication and its importance in the lessening of AIDS-related mortality rates, official data from the Ministry of Health[125] have shown that, while mortality

[122] Barros, Elizabeth, "Health Conditions of the Population and Access to Health Services in Brazil", United Nations Development Program (UNDP), January 2000, mimeo.

[123] Brazil, Ministry of Health, Secretariat for Health Policy, Brasilia-DF, 2001, pages 5, 15/16.

[124] Citizenship Observatory - Brasil, no. 4, ano 2000, item e Ibase, page 146.

[125] In this respect, access the site of the Ministry of Health at www.aids.gov.br.

rate among men dropped from 15.16 percent in 1995 to 14.43 percent in 1996, among women the rate increased from 4.53 percent in 1995 to 4.81 percent in 1996. Although epidemiological and socio-cultural factors could explain the higher mortality rate among women, factors of hormonal nature and differences in the biological dynamics of HIV in infected women have been questioned, since there are very few studies on the effect of medication on the female body.

The health condition of young women in Brazil is a matter of concern and deserves special attention. According to DATASUS,[126] in 1997, 24 percent of all childbirths that occurred within the Single Health System were performed in adolescents. Also worth emphasizing is the number of post-abortion curettages performed in adolescents in age group 15 to 19 years, and the increase in the number of HIV-infected girls. Adolescent childbirths have shown a growing trend since 1993, thereby confirming some studies showing that people are starting their sex life at an earlier age. The data also indicate a reverse relation between schooling and the incidence of adolescent pregnancy, i.e., that low-income girls are more prone to getting pregnant in adolescence; that the supply of different contraceptive methods is insufficient; that the access to reproduction and sexual health services is restricted, due to the fear of young people with regard to confidentiality, and even as a result of the legal barriers to the access to these services such as, for example, the requirement that the assistance be provided in the presence of a parent or guardian.

Finally, no specific focus on the issue of assistance to pregnant adolescents was identified within the scope of the normative actions analyzed. This absence should be questioned, since pregnancy in adolescence has peculiar and differentiated aspects, which call for more specific actions.

Violence against women, including sexual violence, is a serious problem in Brazil. Most of the women attacked, however, do not file a complaint out of embarrassment or fear, especially when the violence occurs within the domestic environment. Furthermore, there are no records of the consequences of this violence to the woman's health. Several campaigns promoted by governmental and non-governmental organizations have strengthened initiatives aimed at making the issue more visible.

Socio-economic indicators are clearly unfavorable to the black population in nearly every aspect. This fact is reflected in the higher mortality rates among black women, in all age groups. Recent studies have resumed the discussion about the role of different variables – biological, behavioral, cultural and social – in determining morbidity and mortality in the black population in relation to certain conditions such as hypertension, type II *diabetes melllitus*, and uterus myoma. The studies are still insufficient.[127] Sickle cell anemia, the most common genetic disease among the black population, has had a Program since 1996, but its implementation still needs to be completed.[128]

We can see that the Public Power has gradually met the requirements of civil society by showing political will to implement actions and accord priority to the female segment. The actions already developed, if well implemented and funded, will result in the gradual improvement of assistance to women. The programs and projects are very recent and their full implementation will depend on the mobilization and performance of local communities within Municipal and State Councils.

**Changes in the health-care model**

The 1980s were marked by the struggle for the return of democracy and by reports of mass sterilization of women, not to mention the disrespect for the human condition during the dictatorial governments, between 1964 and 1985. With the support of worldwide mobilization and of the sanitary reform process in Brazil started in the 1970s, i.e.,

[126] DATASUS is the database of the Single Health System. This database is essential to the management of health and to the knowledge, with quality and speed, about the situation of health. This information, which on the one hand is easily accessed and available, on the other it is of great assistance to decision-making in any area, such as strategic and sectoral planning, epidemiological control and evaluation, auditing, and investigation, etc.

[127] Bastos, Francisco Inácio. "The Feminization of the AIDS Epidemic in Brazil: Structural Determinants and Elimination Alternatives", ABIA Collection, Sexual and Reproduction Health no. 3, Brazilian Interdisciplinary AIDS Association, Rio de Janeiro, 2000. Page14

[128] Citizenship Observatory - Brazil, no. 4, year 2000, item e Ibase, page 144.

during the dictatorial period, a new discourse on public health was introduced, which defined health as a social right of the citizenry.

The movement for reform enabled the creation of the Unified and Decentralized Health Systems (SUDS), which sought to reduce the distortions resulting from the health model shared between the Social Security Institute (INAMPS) – the coverage of which was inclined to healing medicine and included only participants of the formal labor market, persons who contributed to the social security system – and the Ministry of Health and the State Secretariats for Health, more inclined to preventive medicine and the assistance to persons that did not contribute to the social security system.

In short, the 1980s gave rise to the process of decentralization and universalization of the health-care model and to the social security reform, which expanded the assistance coverage. Vertical programs aimed at specific segments of the population, such as the Women's Health Program, were also launched in the 1980s.

The process of democratization and constitution building, which was concluded in 1988, consolidated health in the new legal and institutional plan as a right that is an integral part of the social security system next to welfare and social assistance. Advances have been made in the fields of education and culture, and in the right of the family, the child, the adolescent and the elderly to special protection to be provided by the State. The 1990s were decisive for the consolidation of democracy and for the process of adjustment of the infra-constitutional legislation to the constitutional plan and to the international commitments undertaken by the Brazilian State.

*Article 13*

***States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:***

***(a) The right to family benefits;***

***(b) The right to bank loans, mortgages and other forms of financial credit;***

***(c) The right to participate in recreational activities, sports and all aspects of cultural life.***

**Legislative Measures**

The Federal Constitution establishes that social security shall be provided to those who need it, regardless of contribution to the Social Security system. Among its objectives are the protection of the family, motherhood, childhood, adolescence and old age; the promotion of integration into the labor market; and the guarantee of a monthly benefit of one minimum wage to disabled persons and the elderly who prove their incapability to provide for their own support or of being provided for by their families.

There are no laws or programs specifically directed towards women. All have common features and are temporary and universal (aimed at all the needy). The benefit must be requested by the stakeholder himself; the right is conditioned to certain stipulations and/or counterparts – for example, a minimum ceiling of a maximum family income of R$ 40.00 per person, families with children up to 14 years of age, etc. The only permanent element is the monthly benefit paid throughout life by the national social security agency, regardless of contribution, that guarantees a monthly benefit of one minimum wage to disabled persons and the elderly who prove their incapability to provide for their own support or of being provided for by their families.

Law 8,978/95 establishes that the residential complexes financed by the Housing Financing System (SFH) should include, on a priority basis, the construction of day-care centers and pre-schools. An Administrative Ruling of the Ministry of Planning and Budget issued in March 1998 established that households headed by women should have priority in the selection of housing undertakings and financing. The Administrative Ruling also determined the development of training programs that contemplate the participation of women in the construction of their houses. Notwithstanding the importance of the initiatives aimed at women, the lack of data does not allow us to check the implementation of and the compliance with such laws.

**State Constitutions**

Twenty-one State Constitutions[129] and the Organic Law of the Federal District provide for special assistance to motherhood. The State Constitution of Paraíba, for example, establishes that *social assistance to those who need it, regardless of contribution to social security, shall be provided directly by the state or through the transfer of funds to public agencies or to non-profit private entities*. And also that *the Social Assistance provided by the state shall aim at protecting the family, motherhood, childhood, adolescence and old age*.

Ten State Constitutions[130] include maternity-leave among the Social Security benefits and expressly mention the protection of motherhood and pregnancy. The Constitutions of Paraíba and Goiás also provide for paternity-leave.

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[129] Alagoas, Amapá, Amazonas, Bahia, Ceará, Espírito Santo, Goiás, Maranhão, Mato Grosso, Mato Grosso do Sul, Minas Gerais, Paraíba, Paraná, Pernambuco, Rio Grande do Norte, Rio Grande do Sul, Rondônia, Roraima, Santa Catarina, Tocantins, and Sergipe.

[130] Alagoas, Amapá, Amazonas, Goiás, Pará, Paraíba, Pernambuco, Piauí, Rio Grande do Sul, and Tocantins.

With regard to retirement criteria, the Constitutions of the States of Amapá, Mato Grosso, Pará, Paraná, Pernambuco and Roraima adopt the provisions of the Federal Constitution in full, by establishing that public servants shall retire voluntarily, so far as they fulfill the minimum period of ten years as a public servant and five years in the position they hold at the time of retirement, at sixty years of age and after thirty-five years of social security contribution for men, and at fifty-five years of age and after thirty years of social security contribution for women; or at sixty-five years of age for men and sixty years of age for women, with remuneration proportional to the time of contribution.

The other State Constitutions establish that the public servant shall retire voluntarily after thirty-five years of work for men and thirty for women, with full pay; after thirty years of work for male teachers and twenty-five for female teachers for actual exercise of the teaching function, with full pay; after thirty years of work for men and twenty-five for women, with remuneration proportional to the time of contribution; at sixty-five years of age for men and sixty for women, with remuneration proportional to the time of contribution . The Constitution of the State of Roraima makes no mention to the subject.

**Governmental Actions**

With regard to occupational segregation, some programs count on a protocol of cooperation among the National Council of Women's Rights, the Ministry of Justice, and Secretariat for Personnel Development of the Ministry of Labor. The protocol aims at encouraging the development of professional qualification and employment and income access policies favoring women, which prioritize women in situation of poverty or at social risk, namely: the Employment and Income Generation Program (PROGER), in which 68 percent of the borrowers are men; the National Program for the Strengthening of Family Agriculture (PRONAF), in which 93 percent of the beneficiaries are men; and the National Professional Qualification Program (PLANFOR), in which it was established that 30 percent of the beneficiaries should be women, especially young women at social risk who are subjected to sexual exploitation (50 percent of the overall number of trainees are women).

Indigenous and black women, as well as female street vendors, rural workers and domestic servants are also a target audience. The PLANFOR has been criticized on the grounds that *"there is a high prevalence of qualification courses in skills that are considered feminine,*[131] *with low capacity of economic support in the exercise of these activities, no training directly related to activities of leading sectors of the economy, and the 'absence of a specific credit line that can contribute to the expansion of the business'".*[132]

The Solidary Community Program[133] developed by the federal government coordinates civil society strengthening actions, political dialogues and social development programs or integrated social actions aimed at reducing poverty and at strategic areas that are not appropriately covered by programs developed by the government or by society. However, although these programs have indirectly benefited women in situation of poverty, they still lack specific actions aimed at women.[134]

The basic agenda of the Solidary Community Program is described below.

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[131] Citizenship Observatory – Brazil , no. 4, year 2000, Ibase and item, page 155.

[132] Idem note 3.

[133] Established by Decree no. 1,366, of 12 January 1995, and aimed at "*Art.1 – coordinating governmental actions aimed at assisting segments of society that do not have the means to provide for their basic needs, especially the elimination of hunger and poverty.*" (SOLIDARY COMMUNITY PROGRAM, *homepage on the INTERNET*, s/p).

[134] See table below, with the 17 sub-programs on the Basic Agenda of the Solidary Community Program.

Basic Agenda of the Solidary Community Program. Brazil, 1997

| AREAS OF ACTION | SUB-PROGRAMS | No. OF MUNICIPALITIES COVERED | PARTNERSHIPS |
|---|---|---|---|
| REDUCTION OF CHILDHOOD MORTALITY | • Program to Eradicate Nutritional Deficiency | 1,000 | Ministry of Health |
| | • Community Health Agents Program (PACS) | ... | State Governments/City Halls |
| | • Basic Sanitation Actions | ... | |
| | • National Immunization Program (PNI) | ... | |
| | • Program of Full Attention to the Health of Women, Children and Adolescents | ... | |
| IMPROVEMENTS IN NUTRITIONAL CONDITIONS | • National School Meal Program (PNAE) | ... | Ministry of Education and Ministry of Agriculture and Supply. |
| | • Food Distribution Program (PRODEA) | 1,200 | |
| SUPPORT FOR PRE-SCHOOL DEVELOPMENT AND BASIC EDUCATION | • Program for the Development of Pre-school Education | 747 | Ministry of Education |
| | • National School Transportation Program (PNTE) | 1,228 | |
| | • School Health Program | 640 | |
| | • Program for the Maintenance and Development of Basic Education (PMDE) | 1,297 | |
| STRENGTHENING OF FAMILY AGRICULTURE | • National Program for the Strengthening of Family Agriculture (PRONAF) | 640 | Ministry of Agriculture and Supply |

| | | | |
|---|---|---|---|
| EMPLOYMENT AND INCOME GENERATION AND PROFESSIONAL QUALIFICATION | • Employment and Income Generation Program (PROGER) | 707 | Ministry of Labor |
| | • National Professional development Program (PLANFOR) | ... | Workers' Support Fund (FAT) |
| | • Professional Intermediation Program | ... | |
| IMPROVEMENT IN HOUSING AND SANITATION CONDITIONS | • "Habitar – Brasil" Program | ... | Ministry of Planning and Budget |
| | • Social Action in Sanitation Program (PASS) | ... | SEPURB and CEF |

**Source**: SOLIDARY COMMUNITY PROGRAM. *Three years of work. Homepage on the Internet* s/p.

**Factors and Difficulties**

In Brazil, the prevailing family benefits are universal and cover workers with formal employment relations, excluding domestic servants. Women are more vulnerable to poverty and to the effects of the restructuring of production.

Despite the advances achieved in women's educational level, there are no records of higher incomes and occupational segregation and lower salaries still prevail. The participation of women in the economically active population (PEA) is growing, having increased from 20.4 percent in 1970 to 39.5 percent in 1992 and 41.44 percent in 1999.[135] However, women's responsibilities as head of the household have also increased. The Nationwide Survey by Household Sampling (PNAD) revealed that, in 1999, 26 percent of Brazilian households were headed by women[136] and that in some Brazilian capitals such as Belém (40.5 percent), Salvador (38.6 percent), Recife (33 percent), and Porto Alegre (33 percent), the figures are high above the national average.

As the number of households headed by women increases, women's responsibility towards their own support and the support of their family also increases, giving rise to a demand for family benefits and other compensatory public policies capable of correcting this gender imbalance. The situation is aggravated by other cultural and social factors that push women towards family responsibilities and housework, such as[137] motherhood, mainly when it is associated to the lack of support the adolescent receives from her partner; the lack of attention to and care for older adults on the part of sons; the need to assume domestic responsibilities and complement the household income, and the lack of public support in the care for their children.

[135] Demographic Census 1970 , IBGE. Nationwide Survey by Household Sampling – (PNAD) 1992 e 1999. In Synthesis of Social Indicators 2000. Rio de Janeiro, IBGE, 2001. About 33 million women declare themselves economically active in 1999.

[136] Approximately 12 million households were headed by women in 1999 – 6.5 million by white women and 5.5 million by black women – 65.5 percent of which were formed by single mothers: 61 percent among white women heads of household and 71 percent among black women.

[137] Citizenship Observatory – Monitoring Development, no. 1, year 1997, Ibase and item, page 53.

It has become urgent and necessary to develop compensatory public polices aimed at the women who are excluded from the labor market (some 34 million in 1999),[138] such as incentives to undertakings that take into account the professional life cycle of women, among other initiatives focused on gender issues.

There are no legal barriers in Brazil to the participation of women in recreational and sports activities as well as in others aspects of cultural life. The presence of women in artistic and sports activities is high and there are no data indicating any form of discrimination or the need for affirmative actions in this regard.

[138] These women were prevented from entering the labor market due to their family commitments. Nationwide Survey by Household Sampling (PNAD), 1999. Volume 21- Brazil. Rio de Janeiro, IBGE, 2000.

*Article 14*

***1. States Parties shall take into account the specific problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of this Convention to women in rural areas.***

***2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:***

***(a) To participate in the elaboration and implementation of development planning at all levels;***

***(b) To have access to adequate health care facilities, including information, counselling and services in family planning;***

***(c) To benefit directly from social security programmes;***

***(d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency;***

***(e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self-employment;***

***(f) To participate in all community activities;***

***(g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;***

***(h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.***

**Legislative Measures**

Until early in the 1960s Brazil had no law protecting rural work. In 1963, the establishment of the Rural Worker's Assistance and Social Security Fund (FUNRURAL) (complemented in 1971 by the PRO-RURAL) led to the definition of labor rights and to the guarantee of disability and old-age retirement, in addition to funeral-aid and health and social services to rural workers. It is worth emphasizing that the social security law defined in the FUNRURAL provided for the retirement of just one member of the family, namely the *head of the household*.

Only in 1988, through the Federal Constitution, the Brazilian legislation assumed a universalizing character with regard to social rights, which since then have applied to all workers – rural and urban, men and women.

Brazil ratified the CEDAW in 1984 and in 1988 the Federal Constitution in force ensured equal rights to all under the terms of the law, without any distinctions whatsoever (art. 5, heading). It also introduced an innovation, as a result of the pressure of the movement organized by urban and rural women, by establishing in the Chapter on Family that "the rights and duties of marital society sha!! be equally exercised by men and women" (art. 226 § 5°). It therefore legally eliminated the hierarchy established in the Civil Code, which recognized male leadership.

The new Federal Constitution guarantees, in article 189, single paragraph, equal rights between men and women in the granting of title deeds or concession of land use for the purpose of agrarian reform including, therefore,

in the Brazilian legislation, the international commitments undertaken through the CEDAW.[139] Accordingly, with regard to rural women, on the legal/formal plane, they enjoy identical individual and social rights in relation to men.

In 1992 Brazil also undertook to fulfill the Agenda 21 of the United Nations. This important international document recommends, in its chapter 24 "*Actions aimed at Women: Sustainable and equitable Development*", that "*all countries should implement the Nairobi Strategies,*[140] *which emphasize the need for women to participate in the management of ecosystems and in the control of environmental degradation*".

In 1994 and 1995, respectively, Brazil signed the Action Plans of the *World Conference on Population and Development*, in Cairo, and the *IV World Conference on Women*, in Beijing, which recognize the importance of women in the development process, with equal gender rights, and express special concern about rural women.

The legislative revision, started in 1988 with the Federal Constitution, has not necessarily changed social practices and habits that continued to act as obstacles to the citizenship of women in general and of rural women in particular, as shown by the social indicators developed by governmental agencies.

Article 189, single paragraph of the Federal Constitution establishes that the title deed and the concession of use shall be granted to the man and the woman, or to both, irrespective of their marital status.

Article 194, subparagraphs I and II of the Federal Constitution establishes that social security shall be organized according to the principles of universality of coverage and service and uniformity and equivalence of benefits and services for urban and rural populations.

In addition, article 201, § 7, subparagraph II, of the Federal Constitution establishes that, under the general social security system, the retirement of rural workers shall follow the requirements of sixty years of age for men and fifty-five for women, therefore maintaining the age difference between men and women.

With regard to the right to health, education, housing, financial loans and participation in community life, there is no distinction between urban and rural women in relation to the exercise of such right.

Article 19 of Law no. 8,629/93 reproduces the Federal Constitution by establishing that the title deed and the concession of use shall be granted to the man and the woman, irrespective of their marital status.

**State Constitutions**

Nine State Constitutions (Acre, Amapá, Espírito Santo, Goiás, Maranhão, Mato Grosso do Sul, Paraná, Rio Grande do Norte, Rio Grande do Sul) establish that the title deed or the concession of use shall be granted to the man or the woman, or to both, irrespective of their marital status. With regard to agrarian policies, the majority of the State Constitutions (Amazonas, Bahia, Pará, Paraíba, Paraná, Pernambuco, Piauí, Rio de Janeiro, Rio Grande do Norte, Rio Grande do Sul, Santa Catarina, São Paulo, Sergipe and Tocantins), expressly provide for the protection of the family, without defining the role of women.

Thirteen State Constitutions (Alagoas, Amapá, Amazonas, Ceará, Espírito Santo, Minas Gerais, Mato Grosso, Mato Grosso do Sul, Pará, Paraíba, Paraná, Pernambuco and Rondônia) and the Organic Law of the Federal District provide for - sometimes among the fundamental rights and guarantees and other times among the guiding principles of land, agrarian and agricultural policies – the settlement of **man** in the country, clearly showing the difficulty of the state legislators to adopt a non-sexist and non-discriminatory language, thereby restricting an extremely important principle, i.e., settling the human being in the country.

[139] Article 5, § 2 of the Brazilian Constitution of 1988 recognizes the rights and guarantees provided for in international treaties and covenants in which the Brazilian government is a party.
[140] Strategies developed at the World Conference of Women held in Nairobi, in 1985.

The Constitutions of Ceará and Sergipe are the only ones that deal expressly with the issue of rural working women. The Constitution of Sergipe establishes that *"The State shall encourage and assist the production sectors, developing agricultural and industrial policies that specifically recognize the value of work, especially the work of women"*. The Constitution of Ceará takes a step further and seeks to contemplate the specific issue of women in the rural area, providing for measures aimed at ensuring their rights. *"The State shall take into account the specific problem of women in the rural area with regards to the role they play in the economic support of their families and to the remuneration for their work. The State shall also adopt appropriate measures to guarantee the right of rural women to participate in the elaboration and implementation of development plans at all levels; to have access to programs of full assistance to women's health, including family planning programs"*.

**Governmental Actions**

Women's struggle, especially rural workers, supported by the National Council of Women's Rights (CNDM)[141] was fundamental for the legislative process and the design of public policies. Among its many programs and activities, in 1985 the Council introduced, in partnership with the Ministry of Agriculture, the *Program of Support for Rural Women*. In 1986 it established the *Committee of Support for Rural Working Women*, in partnership with the CNDM and the Ministry of Agrarian Reform (MIRAD). In 1986, the Ministry of Agriculture organized the 10th National Congress of Rural Women, where the demand of land title deed on behalf of women was the main subject under discussion.[142]

In the area of agrarian reform, the federal government introduced, through the National Institute of Colonization and Agrarian Reform (INCRA), several Programs such as the Credit Program for Agrarian Reform (PROCERA/1985), the Casulo Project[143] (1997), the Lumiar Project[144] (1997) and the National Education Program in Agrarian Reform (2000), among others. In the set of these projects, special mention should be made to the National Program for the Strengthening of Family Agriculture (PRONAF), which was introduced in 1996 with the aim of benefiting rural workers of both sexes, small landowners, and persons who had been officially granted a piece of land for the purpose of agrarian reform.

A survey carried out by IBASE, a non-governmental organization, to assess PRONAF emphasized that *"nearly all the beneficiaries were men (93 percent)"*.[145] The conclusion, therefore, was that, in fact, women had not been included in the access to rural credit yet, since they were still considered dependents of men.

Concerned about changing this picture, the Ministry of Agrarian Reform has sought to introduce the gender perspective in its programs. As a result of this concern, the Ministry of Agrarian Reform established a quota program, which earmarks, initially, 30 percent of all funds to women settled in family agriculture units. This fund distribution comprises credit lines of the National Program for the Strengthening of Family Agriculture, Banco da Terra, training and technical assistance. Women will be entitled to 30 percent of the R$ 4.2 billion (approximately US$ 1.9 billion) that the government makes available every year for agrarian reform financing.

Therefore, in the year 2000, through administrative rulings, women accounted for 30 percent of borrowers of micro-credit lines for the northeastern region. Another important Program, established by Complementary Law no. 93/98 and regulated by Decree no. 3,475 of May 2000, is Banco da Terra, which has the objective of eliminating the hindrances felt by small producers when trying to access credit and which also, in thesis, benefits men and women. Within this rural credit program, the Ministry of Agrarian Development established that 30 percent of all funds should be earmarked for women settled in family agriculture units.

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[141] Established in 1985, the CNDM played a decisive role in the inclusion of the claims of women's movements on the agenda of the constituent process and later on, in the Brazilian Constitution of 1988.
[142] See Barsted, 1994 and 1996.
[143] This Project, according to INCRA documents, is a decentralized form of settlement, implemented in partnership with the municipalities.
[144] According to INCRA, the Lumiar Project is aimed at providing technical assistance to and qualifying settled families.
[145] See IBASE, Citizenship Observatory (2000).

In 2001, Administrative Ruling no. 121 of the Ministry of Agrarian Reform earmarked 30 percent of the PRONAF funds to rural women. In that same year, during the women's enterprising week, the National Council of Women's Rights (CNDM), through an agreement with the Brazilian Service of Support for Small and Medium Enterprises (SEBRAE), trained 120 women in the southeastern region (Pontal de Paranapanema – São Paulo) in initiation to credit, with the aim of qualifying them for access to financial resources.

**Factors and Difficulties**

Notwithstanding the fact that some Latin American countries, such as Brazil, recorded a qualitative leap in democratization in the 1980s, the decade was characterized as a lost decade in the region, in face of the growing poverty that struck the continent. In the 1990s, as the most positive indicators show, the expansion in the implementation of international policies of structural adjustment brought with it, among other consequences, the reduction in public spending on social programs, with specific impact on both urban and rural women. The option the region's countries chose for economic development styles focused on urban activities or on agri-industry, especially agri-industry for export, reinforced the historical trend to privilege the urban in detriment of the rural. It is within this context that the difficulties of totally fulfilling article 14 of the CEDAW should be understood.

In fact, the rural area had already been historically characterized by the lack of public investments in basic services, and the social pressure, in this regard, was much lower than the pressures recorded in the country's urban areas. The FAO includes among the causes for rural population poverty, the difficulty to access land and the huge concentration of land property, even in countries that have endeavored to promote agrarian reform processes.

As in the entire Latin American continent, the rural population in Brazil has decreased significantly in the past decades, as a result of both the rural exodus to large cities and the development of small towns in areas that were considered as rural spaces in the past. In fact, data from the 2000 Demographic Census indicated that the rural population accounts for just 18.8 percent of the overall Brazilian population.

In Brazil, the persistence of a high level of rural poverty in relation to urban areas may be observed in the data collected by the 1999 PNAD. Therefore, while 21.5 percent of rural families lived on up to one minimum wage, in the urban areas this figure stood at 8.8 percent. In the average-income bracket, only 8 percent of the rural families lived on 50-10 minimum wages a month. In the urban area, in the same income bracket, this figure jumps to 21 percent of the families living in private homes.

Still according to the 1999 PNAD, 32,585,066 of the country's overall 160,336,471[146] inhabitants lived in rural areas, a figure that accounted for 20.3 percent of the Brazilian population.

In rural areas, as in urban areas, with the exception of educational indicators, the situation of women as compared with that of the men shows significant gaps when income levels, access to social security and to formal employment, and, consequently, access to land title deed, credit, qualification, technical aid, and the presence of labor unions are taken into account.

**Labor and Income**

Data from the 1999 PNAD indicate that the number of people employed by the agricultural sector increased by 6.3 percent and their participation in the overall employed population returned to levels observed in 1997 (24.2 percent). According to the IBGE, this is due to the increase in agricultural production, which demanded an increase in labor. Still according to the IBGE, unremunerated workers and people working to provide for their own support accounted for 41.2 percent and 22.1 percent, respectively, of the 1 million increase in the number of people involved in agricultural activities.

[146] The 2000 Census estimated the Brazilian population at 172,928,618.

Therefore, despite the historical process of decrease in the rural population, and taking the high level of under-remuneration[147] of female rural workers into account, the female rural Economically Active Population (PEA) represents the second main branch of female economic activity in Brazil. A comparative analysis of the income levels of men and women shows that women are under-remunerated,[148] – a phenomenon that is not specific to rural areas, but that, in this case, has more severe consequences on women.

Confirming the historical subordination and invisibility female activity in agriculture, some 39 percent of the employed women are classified as unremunerated and 41.8 percent as providers of their own support. According to the 1998 PNAD/IBGE, in activities typical of agriculture and livestock, 27.5 percent of the women and 81 percent of the men were unremunerated.[149]

An analysis of the situation of women in rural areas requires more than just an understanding of the socio-economic context. It requires the cultural factors that generate the hierarchical models between men and women and that explain the invisibility of the production labor of rural women, even when they participate in nearly every production activity. For this reason, the activity rates of women in general, and specifically of women in the rural area, have been historically underestimated.

Comparatively, the income of female rural workers, like that of urban workers, is still inferior to that of men; compatible, therefore, with the national standard that displays a strong differentiation between the income of men and women in all types of occupation.

**Income and Household Command**

Despite the situation of economic dependence, the number of households headed by women has increased significantly. According to data from the PNADs, between 1981 and 1989, the number of monoparental families headed by women increased from 787,042 to 1,051,788. In relative terms, this translates into a 33.64 percent increase.

**Participation in Rural Associations and Labor Unions**

The situation of unremunerated women in family agriculture and the force of the habit that delegates the command of the household to the man are reflected in the data on the low participation of women in associations and unions of rural workers.[150]

Despite these data, it is worth emphasizing that within the country's re-democratization process, during the 1980s, alongside social movements emerged a strong movement of rural workers organized around labor issues, the search to expand social rights, and the struggle for access to land. Special mention should be made to the mobilization of rural women who, around the country, fought for both general and their specific claims.

**Social Security**

According to the 1999 PNAD, in the 1998-1999 period, the number of Brazilians that contributed to the social security system increased significantly (0.6 percent) and its proportion in relation to the employed population decreased from 44.3 percent to 43.5 percent.

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[147] Unremunerated work serves as an element of invisibility of women in the production activity. It is estimated that, in 1998, 81 percent of all unremunerated agricultural workers were women. In this regard see PNAD/IBGE, 1998. Special Tabulations: Melo & Sabbato, 2000, Apud ABRAMOVAY and RUAS (2000).

[148] The PNAD shows that the average monthly income of men is 3.2 minimum wages, while women's is 1.4 minimum wage. Also according to the PNAD, in 1995 the average income of remunerated women represented 62.6 of men's income; in 1999 it reached 69.1 percent. Source: IBGE/PNAD, 1999.

[149] Source: IBGE/PNAD, 1998.

[150] In this regard, see paper promoted by UNESCO and developed by Miriam Abramovay, 2000.

With regard to the social protection provided by the National Institute of Social Security (INSS), this decrease can be explained as one of the consequences of the reduction in formal employment that has occurred in the country since 1990. The contributions to Social Security have decreased in both sexes.

However, in the rural area – historically under-protected by the labor legislation – there was an increase in the number of formal jobs and a consequent increase in the number of people contributing to the social security system in the 1998-1999 period, as result of the protection provided for in the Federal Constitution of 1988. This same process did not occur with regard to female rural workers. Rural women get lower protection from social security than rural men. In addition, as they have no income of their own, most rural working women are considered dependents of their husband or father by the social security system. Based on data from the IBGE (Statistical Yearbook), Bruschini and Lombardi (1998) noticed that in 1996 the National Institute of Social Security provided assistance to 8,000 mothers, among domestic servants and rural workers, through the maternity-salary.

**Education**

With regard to education, the past decades have witnessed a significant improvement in the educational level of the population at large, with emphasis on urban women. Therefore, according to the 1999 PNAD, illiteracy rates among women and men stand at 15.3 percent and 16.1 percent, respectively. Still according to the same source, in 1999 the number of literate women (84.7 percent) exceeded that of men (83.9 percent).

Despite the increase in national educational rates, rural areas still display the lowest rates of schooling in the country. The 1999 PNAD indicated that the illiterate rural population comprised 7,573,033 persons above 7 years of age. According to the 1998 PNAD, only 17.0 percent of employed women and 18.5 percent of employed men had more than five years of formal education. As for the overall employed rural population, the 1998 PNAD indicated that 32 percent of the men and 30 percent of the women were illiterate.

**Health, Life Expectancy, Maternal Mortality**

By establishing the Single Health System (SUS), which was regulated by federal laws and brought responsibilities to federal, state and municipal governments, the Federal Constitution of 1988 adopted the principles of full attention to health and universal assistance. In addition, the improvement in basic sanitation, alongside the national campaigns of child inoculation, are certainly responsible for the decrease in child mortality rates in the past decades.

With regard to maternal mortality, the international rates indicate that the number of maternal deaths decreased from 142/100,000 in 1981 to 78/100,000 in 2000. The northern and northeastern regions display the highest rates of maternal mortality, especially in rural areas.

This datum also indicates the poor performance of the public health network in rural areas in Brazil. A survey carried out by UNESCO[151] in rural settlements also indicates that, irrespective of gender, some 15 percent of the settlers affirm that they have no easy access to health services. The access to health services varies among regions. Therefore, in the settlements surveyed in the State of São Paulo, 87 percent of women had had the uterus cancer prevention examination. However, in settlements in the state of Bahia, that percentage fell to 55. The same survey also indicated the low level of knowledge of both men and women regarding sexually transmitted diseases, including HIV/AIDS.

**Housing and Basic Sanitation Conditions**

Data from the 1999 PNAD indicated that the coverage of basic sanitation, garbage collection, and electricity services is increasing in Brazil. The service with the largest coverage was electricity, which in 1999 reached 94.8

[151] Idem, ibidem, page 100.

percent of all households. However, in 1999 about one-fourth of rural households had no electricity, while in urban areas, only 0.8 percent of the households lacked this service.

With regard to garbage collection, while in urban areas the service reached 93.7 percent of all households, in rural areas it did not exceed 19.6 percent.

These negative unfavorable indicators have different impacts over men and women, taking into consideration the fact that women have been culturally responsible for housework such as cooking, cleaning and caring for the family's health.

**Access to land and credit**

According to data from the Presidency of the Republic, in the past six years the federal government expropriated 8.7 million hectares of land for the purpose of agrarian reform benefiting 372,000 families. However, this process did not cover men and women equally.

In the rural area, despite their struggle, especially those organized in rural associations and labor unions, the statistical data from the 1996 Agrarian Reform Census indicate a low representation of women as beneficiaries of adjudicated land. Among the beneficiaries of agrarian reform plans, 85 percent are men. Women have just 12.6 percent of the title deeds and concession of land use.[152]

With regard to the access of the beneficiaries of the National Program for the Strengthening of Family Agriculture (PRONAF), by the end of 1999 only 7 percent of all beneficiaries were women. This percentage is expected to increase considerably as a result of Administrative Ruling no. 121 of the Ministry of Agrarian Development, which, in 2001, determined that 30 percent of the PRONAF funds should be earmarked for actions aimed at rural women.

Furthermore, as already mentioned, in October 2000 the Ministry of Agrarian Reform earmarked 30 percent of its micro-credit lines for rural women in the country's northeastern region.

Despite these efforts, there are still many hindrances to the fulfillment of article 14 of the CEDAW. These hindrances should be understood on the basis of the historical model of economic development that characterized all Latin American countries, which privileged urban areas in detriment of rural areas.

Moreover, in the rural areas the gender asymmetries are reinforced by stricter cultural standards, which, in practice, ensure men more rights, although the law guarantees equal rights and obligations between men and women.

Until the advent of the Constitution of 1988, the long existence of a civil law that legitimated the hierarchy between men and women in family relations deeply marked the way of thinking and the behaviour of the Brazilian society. Both in common sense and in court sentences this hierarchy exists and operates against women. Upon analyzing judicial proceedings, Pimentel, (1997), Hermann and Barsted (1995), Pereira (2000a) and other authors, came across sentences that unveiled prejudices and reaffirmed hierarchies no longer accepted by the legislation. Therefore, in certain contexts, the social representations of gender roles have been more efficient than legal decisions about equality.

Pioneer studies such as those of Moura (1976) and Carneiro (1996), by including, either implicitly or explicitly the gender perspective, show the weight of a hierarchical customary right that ensures men a "natural" privilege, on matters such as land inheritance and ownership systems.

[152] INCRA (1998). 1,8 percent did not reply.

Some government employees have not yet incorporated into their actions the meaning of article 226, §5° of the Federal Constitution, which established that the rights and duties of marital society should be exercised equally by the man and the woman, thereby eliminating power hierarchies within the family. However, several official documents, including those within the scope of the Institute of Colonization and Agrarian Reform (INCRA), until recently still used terms such as "Head of the Household" to describe the holders of title deeds for the purpose of agrarian reform.

The use of terms in the legislation such as the pronoun "he" to include both men and women has harmed the latter with regard to the enforcement of provisions that guarantee rights. Decree no. 3.475 of 2000, for example, kept the pronoun "he" by establishing that:

*Art. 5 The following may benefit from financing using funds of Banco da Terra:*

*I – the rural worker that is not a landowner, preferably a wage earner, a partner, a person who has the possession of the land and a lessee, that proves that he has at least five years of experience in the rural sector;*

*II – the farmer whose real state does not exceed the size of the family property, as defined in article 4, subparagraph 4 of Law no. 4,504 of 30 November 1964, and is insufficient to provide for his own support or the support of his family;*

Therefore, the legislation not only maintains the pronoun "he" to refer to both men and women, but it also includes requirements than can more easily be met by rural workingmen than working women such as, for example, the proof of continuous performance of rural activities.

The same Decree, in its article 8 also establishes that:

*Art.8 The concession of financing with funds of Banco da Terra is forbidden to whomever:*

*II – has benefited from any rural settlement project, as well as the respective spouse.*

Since men are more likely to have access to credit, women, in the capacity of spouse, have, in practice, reduced possibilities to have access to the benefit.

In addition to complex and unknown bureaucratic procedures, women stumble on the lack of socialization to deal with financial and administrative agents. These, in turn, are incapable of dealing with the women who seek credit or access to professional qualification, to the extent that, many times they still consider men as the only head of their households and landowners. This fact would explain in part, the low percentage of women (12 percent) among those who benefit from agrarian reform plans or credit and rural qualification programs. Furthermore, the lack of training in financial planning, management of funds, and trading processes, among other areas, coupled with external discriminatory mechanisms (including family-related mechanisms) emerge as additional hindrances that need to be eliminated for the total fulfillment of article 14 of the CEDAW.

*Article 15*

***1. States Parties shall accord to women equality with men before the law.***

***2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.***

***3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.***

***4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.***

*Article 16*

***1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:***

***(a) The same right to enter into marriage;***

***(b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;***

***(c) The same rights and responsibilities during marriage and at its dissolution;***

***(d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;***

***(e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;***

***(f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;***

***(g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;***

***(h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.***

***2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.***

**Legislative Measures**

Upon ratifying the Convention of the Elimination of All Forms of Discrimination against Women (CEDAW), in 1984, the Brazilian State undertook to implement equality between men and women before the law. However, in the matters related to marriage and family relations provided for in articles 15 and 16 of the CEDAW, the country ratified the Convention with some reservations. On 20 December 1994, Brazil withdrew all such reservations.

**Federal Constitution**

Equality is a fundamental value of democracy. As already mentioned in this report, the Federal Constitution, in its article 5, accords to all individuals formal equality before the law, without distinction of any nature, by establishing in subparagraph I, ***"equal rights and duties to men and women"***.

Articles 226 and 227 of the Federal Constitution, in the Chapter of Family, Children and the Elderly, establishes that:

*Art.226. The family, which is the foundation of society, shall enjoy special protection from the State.*

*§1 Marriage is civil and the marriage ceremony is free of charge.*

*§2 Religious marriage has civil effects, in accordance with the law.*

*§3 For purposes of protection by the State, the stable union between a man and a woman is recognized as a family entity, and the law shall facilitate the conversion of such entity into marriage.*

*§4 The community formed by either parent and their descendents is also considered as a family entity.*

*§5 The rights and duties of marital society shall be exercised equally by the man and the woman.*

*§6 Civil marriage may be dissolved by divorce, after prior legal separation for more than one year in the cases set forth by law, or after two years of proven de facto separation.*

*§7 Based on the principles of human dignity and responsible parenthood, family planning is a free choice of the couple, it being within the competence of the State to provide educational and scientific resources for the exercise of this right, any coercion by official or private agencies being forbidden.*

*§8 The State shall ensure assistance to the family in the person of each of its members, creating mechanisms to suppress violence within the family.*

*Article 227.*

*It is the duty of the family, the society and the State to ensure children and adolescents, with absolute priority, the right to life, health, nourishment, education, leisure, professional training, culture, dignity, respect, freedom and family and community life, as well as to guard them from all forms of negligence, discrimination, exploitation, violence, cruelty and oppression.*

However, examples of infra-constitutional legislation that were not adopted by the Federal Constitution of 1988 can still be found in the Brazilian legal system, such as several provisions in the Civil, Commercial and Penal Codes.

As already mentioned in the comments about articles 1 and 2 of the Convention, although many jurists understand that the discriminatory provisions in the aforementioned Codes would already have been revoked by force of the constitutional text, it is worth recalling that such understanding is not a consensus and that the revoking arisen from the inception of the Constitution is tacit and not express, and therefore the decision to enforce such provisions is left at the discretion of the judges.

It is worth recalling, as already mentioned in this report, that in August 2001 the National Congress approved the New Brazilian Civil Code, which will enter into force on 11 January 2003, upon expiration of the *vacatio legis* period.

In this regard, it is important to emphasize that the original 1975 bill trod a long way before being approved in National Congress, having received several amendments. With regard to gender equality, the mark of this process was the New Civil Statute of Women,[153] submitted to the presidency of the National Congress in 1981. This proposal, which resulted from women's debate about gender equality in the civil law, was incorporated, almost in its entirety, in 1984, into the original project, which has just been approved.

[153] Prepared by Florisa Verucci and Silvia Pimentel in 1980.

The progress is clear. The new Civil Code, which will enter into force on 11 January 2003, innovates to the extent that it eliminates discriminatory gender rules such as, for example, those that designated the man as the head of the marital society; established the preponderance of paternal power and the husband's authority in managing the couple's assets, including the woman's private assets; accorded the man the right to have the marriage annulled, in case he did not know, before hand, that the woman had already been deflowered, as well as to disinherit the dishonest daughter living with him.

It also innovates by expressly introducing concepts such as shared control, instead of having the man as the head of the marital society; shared family power, instead of the father's supremacy in paternal power; replaces the term "man", when generically used in reference to the human being, by the term "person"; ensures the husband the right to use his wife's last name; and establishes that custody of the children will be accorded to the spouse that can best exercise it; among other aspects.

However, the bill also includes some anachronistic concepts and values. As an example, we emphasize, in articles 1,572 and 1,573, VI of the bill, the fact that "dishonoring conduct" might lead to an action of separation by any of the spouses. Under the appearance of ideological gender neutrality, the term "dishonoring conduct" could be attributed to either sex. Nonetheless, terms allusive to honor and honesty, under our civil laws, have been traditionally loaded with pejorative and discriminatory connotations with regard to women's sexuality.

Another example is article 1,520 of the bill, which provides for the marriage of those who have not reached the proper age for marriage, so as to avoid the imposition or fulfillment of criminal punishment. In our view, this article relates to the extinction of the punishment provided for in the Civil Code, applicable in cases where the victim of sexual offenses marries the aggressor. This benefit is based on the fact that the victims "honor is preserved" through marriage. The New Civil Code therefore maintains the traditional role assigned to women in society: marriage. This rule is in violation of the principle of equality and harms the dignity and human rights of women by attributing to marriage the character of both repairer of the violence committed and generator of impunity.

Also worth emphasizing is subparagraph I of article 1,736 of the New Civil Code, which establishes that married women may refuse guardianship. However, there is no equivalent rule in relation to married men.

Article 1,523 of the New Civil Code is anachronistic by establishing that widows and women whose marriage was dissolved for being null or was annulled can only remarry ten months after the beginning of widowhood or of dissolution of the marital society. This restriction, which was based on the problem of a possible confusion with regard to paternity, has become senseless, for it is certain that the advances in biological and medical science, especially genetics, make it possible to verify the paternity through tests that are becoming increasingly more precise and accessible.

It is important to reaffirm that **advances have indeed been made**. This is a historical moment, which crowns an important struggle of Brazilian women that lasted over two decades. Therefore, we have to wait for the New Civil Code to come into force, in January 2003, so that the discriminatory rules contained in the current Code can actually be eliminated and a new order, capable of fulfilling the principles of equality and non-discrimination can be established in the area of family law.

However, as for articles 15 and 16 of the Convention, it is necessary to emphasize that comments will be made, especially with regard to the provisions of the Brazilian legislation within the scope of civil and family law. With specific regard to the Penal Code, it would be worth reading the comments on articles 1 and 2 of the Convention.

**Federal Legislation**

***With regard to paragraphs 1, 2 and 3 of article 15 of the Convention:***

As for the ***Civil Code*** still in force, which dates back to 1916, it is worth mentioning the articles below, which indicate that discriminatory provisions have persisted for a long time. Likewise, the elimination of such provisions by the *New Civil Code*, which will come into force on 11 January 2003, will translate into important advances:

- The single paragraph of article 36 establishes that the domicile of a married woman will be that of her husband's, unless she is separated (art. 315), or responsible for administering the couple's property (art. 251);
- Subparagraph IV of art. 219, combined with § 1 of article 178, considers it an essential error over the person of the spouse the deflowering of the woman, of which the husband is unaware, and establishes a limitation of action of ten days from the celebration of the marriage for the husband to have the marriage to the woman that had already been deflowered annulled;
- Article 247 establishes that *"The wife will be presumed authorized by the husband: I – to purchase, even if on credit, the items necessary for managing the household; II – to obtain, on loan, the money that the purchase of such items might require; III – to fulfill the duties related to the industry, or to the profession she exercises as authorized by her husband or by a court of law. Single Paragraph: The woman who holds a public office or has devoted herself to the profession exercised outside the marital home for over six months shall be considered as having been authorized by her husband"*.
- Article 251 states that " *The woman will be responsible for administering the couple's property when the husband: I – is in a remote or unknown location; II – has been in prison for over two years; III – is legally declared incapable. Single Paragraph: In such cases, the woman shall be responsible for: I –administering common property; II – disposing of property and transferring common real estate as well as the husband's real state; III – administering the husband's real state; IV – transferring common real estate as well as the husband's real estate upon special authorization from a court of law"*.

Still with regard to the same legal instrument, the following provisions, which are also out of tune with the Federal Constitution, deserve to be mentioned:

- Article 1,538 establishes that, in case of injury or any other harm to health, the offender shall compensate the victim for medical treatment and loss of profits until the end of convalescence, in addition to paying for the fine at the medium degree of the corresponding punishment. In its § 2, said article establishes that if the offended, crippled or deformed is a single woman or a widow still capable of remarrying, the compensation shall consist in a dowry proportional to the possessions of the offender, the circumstances of the offense, and the gravity of the injury;
- Article 1,548 accords the woman whose honor has been damaged, the right to demand from the offender, should he be unable or refuse to repair the damage through marriage, a dowry proportional to his own condition and status. The woman will have had her honor harmed if she: was a virgin and is underage; has been deflowered; is an honest woman and has been sexually abused or terrified by threats; has been seduced with promises of marriage; has been abducted;
- Article 1,744 establishes that, in addition to the reasons mentioned in article 1,595, parents are authorized to disinherit their descendants if the "dishonesty" of the daughter living in the father's house is proven.

A significant advance was made with the issuing of the ***Statute of Married Women***, which eliminated from the Civil Code the precept that considered the married woman relatively incapable, placing her alongside the profligate, the Indian, and the pubescent minor. It also revoked the requirement of the husband's authorization for married women to perform commercial activities. Law no. 4.121 of 27 August 1962, which established the Statute, amended the original text of article 233 of the Civil Code, which assigned to men the control of the marital society. This control is now shared with the woman, in the common interest of the couple and the children.

The ***New Brazilian Civil Code***, it is worth mentioning, accords women the "power to make decisions", with regard, for example, to the choice of the domicile. In the exceptional cases in which the decision befalls upon the man,

the woman will have the right to resort to a court of law to see that her wish prevails, so far as the issues are essential and not of a personal nature (art. 1,569 and 1,567, single paragraph).

The aspects related to the ***Penal Code*** are referred to in the comments on articles 1 and 2 of the Convention.

***With regard to paragraph 4 of article 15 of the Convention:***

As for the freedom to choose the residence or domicile, article 233, subparagraph III of the Civil Code ensures the husband the right to choose the domicile, to which his wife shall agree. In this case the doctrine, in almost its entirety, states that this provision was not adopted in the Federal Constitution of 1988, since the woman *owns* the right to choose the marital domicile. In this regard, the ***New Civil Code***, in its article 1,569, establishes that *"the couple's domicile shall be chosen by both spouses, although either one can be absent from the marital domicile to fulfill public duties, exercise his/her profession or meet relevant private interests"*.

However, the Brazilian doctrine still provides for situations in which the woman can leave the marital domicile: if the husband does not treat her with due respect and consideration; if the husband intends for her to follow him in his wandering life or to migrate with him to escape criminal conviction; if the husband, out of caprice, moves to an inhospitable, unhealthy or uncomfortable place.

There are differences with regard to the violation of the duty to cohabit on the part of wife and the husband. Should the former violate it: 1) the husband's obligation to support her will cease; 2) the temporary arrest of part of her personal income, on behalf of the husband and the children may be determined (art. 234 of the Civil Code and Abstract 379 of the Federal Supreme Court); 3) she cannot be appointed as administrator of inventory if, on the occasion of the husband's death, she was not living with him (art. 1,579, § 1 of the Civil Code and art. 990, subparagraph I of the Code of Civil Procedure) or take possession of the inheritance until the distribution of estate, what would occur if she were living with him. If in turn, the husband violates such duty, the wife may file for judicial separation. However, the husband will still have to support her, so far as the need-possibility binomial is met.

Before the ***Divorce Law*** of 1977, the wife's refusal to accompany her husband to the place chosen by him as their domicile was characterized, at the end of a two-year period, as desertion of home. If the refusal referred to a shorter period, it constituted grave defamation. Both cases provided the necessary and sufficient grounds for judicial separation. The Divorce Law modified the motives that led to judicial separation, which can now be requested by either spouse on the grounds of dishonest conduct on the part of the other, or of any act that implies serious violation of marital duties. Therefore, if the wife unjustifiably refused to accompany the husband that settled in a new domicile she would be violating the duty of cohabitation.

Law no. 4,121/62 (Statute of the Married Woman), which altered subparagraph III of art. 233 of the Civil Code, continued, however, to accord the husband the right to choose and change the family's domicile, but gave the woman the possibility to resort to a court of law, should a given decision be harmful to her. A minor part of the doctrine understands that, according to the Civil Code still in force, the woman has but the right to oppose to certain abusive choices of her spouse, by resorting to a court of law. However, the juridical equality achieved by the spouses allows the decisions concerning marital society, such as the choice of the domicile, to be made by both the husband and the wife. Today, the wife has the "right to oppose", by resorting to a court of law. The term "right to oppose" leads to the understanding that the husband has the right to decide and, should the wife disagree, she can resort to legal provision. But this rarely occurs, for the wife who wants to preserve the marital society will not resort to a court decision, since it would certainly affect such society.

Finally, it is worth emphasizing that, on 20 December 1994, Brazil withdrew the reservation it had made to article 15, paragraph 4 of the Convention on the Elimination of All Forms of Discrimination against Women in 1984, upon its ratification.

***With regard to paragraph 1 of article 16 of the Convention:***

***Items a)*** and ***b): The right to enter into marriage and to freely choose the spouse***:

The Civil Code in force imposes a restriction to the right to matrimony, insofar as it differentiates men and women according to age. It also provides for the legal restriction imposed by article 258, single paragraph, subparagraph II, according to which the man over sixty years of age and the women over fifty who wish to enter into marriage must do so under the separate ownership of property system.

However, the New Civil Code, in its article 1,517, establishes that before coming of age, *men* and *women* may enter into marriage at the age of 16, with due authorization of their parents or legal representatives.

***Items c)*** and ***h)***: **Rights and duties of spouses during marriage**

These items determine that the States Parties shall adopt all appropriate measures to ensure men and women the rights during marriage at upon its dissolution in respect of ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration. The different marriage systems are described below:

**1) Legal System – Partial Community Property:** Under the Civil Code in force, the man is responsible for the administration of property (common property as well as his own and his wife's personal property). In relation to the woman's property, the man will act as her representative, since she has ownership of whatever belongs to her.

**2) Community Property:** Among properties excluded from the common property system are the individual assets, i.e., the savings of the married woman who exercises a profitable activity different from that of her husband's. Therefore, the proceeds of the woman's work and property purchased with such proceeds are not common – despite the fact that she's married under the community property system (Civil Cod., article 246, single paragraph) – but can be used to pay for debts incurred by the man on behalf of the family. However, only the man's individual assets can be used to pay for debts incurred by the woman on behalf of the family. This provision characterizes unequal treatment, since the number of assets excluded from the woman's share is higher than that excluded from the man's share, although there is no reason for such a distinction. It is worth emphasizing that, with regard to reserved assets, the woman has the power to administer, enjoy and dispose of such assets, except for real state, the alienation of which requires the husband's authorization. In case of the woman's death, all assets are transferred to the necessary heirs. Property purchased with the proceeds of the man's work is included in the community. During marital society, the spouses have common ownership of property, according to article 266 of the Civil Code. However, there is still discrepancy in the doctrine with regard to who should administer such property. There are some who accord the man the position of head of the household, who should be therefore responsible for the administration of property. They add that the woman should only administer the couple's property upon her husband's authorization or in the cases provided for in articles 248, subparagraph V and 251 of the Civil Code. Still with relation to property administration and the right of succession, there is one legal restriction regarding the execution of the state that applies only to women: she can only be the executor of the state if she were living with her husband.

**3) Separate Ownership of Property:** As established by law, this system shall apply to the following persons who enter into marriage: a) women under 16 years of age and men under 18. This requirement is fully justifiable by the bio-psychological reasons, i.e., at such age, men and women do not have full discernment with regard to this matter; b) the widow or the woman whose marriage has been dissolved for being invalid or for having been annulled, up to ten months starting from the beginning of widowhood, or from the dissolution of the marital society or bonds, unless before the end of such time period she gives birth to a child. In this case, the reason is also clear, since the aim is to avoid the *turbatio sanguinis;* c) men over 60 years of age and women over 50. However, the rule does not apply if the couple has been living together for more than ten consecutive years or has any children. In this case, the couple is free to choose the marriage system. But differently from the two previous situations, in this case there is no plausible reason for age distinction between the man and the woman or for legal restriction. The responsibility for the debts incurred by

the spouses are provided for in the Civil Code, as explained below. Only the debts incurred by the woman will be transferred to the man, if aimed at the purchase of items necessary to the household, at the obtaining, through a loan, of the money required to purchase such items, or to fulfill the duties regarding the industry or profession she exercises as authorized by her husband or by a court of law (articles 247, subparagraphs I, II e II and 254) and if the husband has profited from the loan taken out by the woman. However, his liability is ancillary, i.e., it will only occur if the woman's assets are insufficient to repay the loan. The second part (debts incurred in the exercise of the profession) does not seem to be fair, for if the woman exercises a profession in the labor market, she should be liable for the debts incurred in such a case. The first part is incompletely described in our Civil Code, for there are men performing housework. In this marriage system, article 277 of the Civil Code establishes that the woman should contribute to the couple's expenses with the proceedings of her assets, in proportion to value of such proceedings in relation to her husband's, except if otherwise provided for in the marriage contract.

**4) Dowry:** In this system, the set of assets, known as dowry, is transferred to the husband by the woman, or by a third party acting on her behalf, so that, in order to pay for matrimonial expenses, he can take whatever amount is necessary from such assets, provided that it is returned at the end of the matrimonial society. The New Civil Code does not provide for the dowry system or to the woman's individual property. It does not establish that the proceeds of her work should be non-transferable in the community property system. It chose to adopt an intermediary solution, since whatever is obtained from her work will constitute individual property, but whatever results from the investment of her earnings will constitute common property. Individual assets to be considered as such, a provision in this regard should be included in the pre-marital agreement.

The Brazilian Legal system requires the consent or authorization of the spouse for the disposition of real estate, irrespective of the marriage system, including the transfer of or lien on such real estate resulting from actual right in favor of a third party (easement, mortgage, rent, etc.) and actions regarding actual rights in which one of the spouses is either the plaintiff or the defendant, and with regard to which both should be served, when one of the parties is the defendant, and authorized by the other party, when this party is the plaintiff. Surety and donations, if they constitute gratuity, require the authorization of the other spouse. However, the same does not apply to collateral signature on credit instruments, which does not require such authorization. This provision of this law, which will be in force until 10 January 2003, has been harshly criticized. The authorization of the other spouse with regard to collateral signature on credit instruments was not provided for in such law because, when the restrictions to the spouses' freedom of action were developed by the legislative, women rarely engaged in legal businesses involving credit instruments. These businesses were almost exclusively in the hands of men, who did not accept their wives' interference in their business. However, many times, endorsing a credit instrument represents much more to the family, in economic terms, than surety, which requires the consent or authorization of the other spouse.

The conclusion of the previous paragraph is based on the fact that article 242, IV, of the Civil Code, contains a restriction that applies only to women, i.e., that of assuming obligations that could imply the alienation of the couple's assets. This prohibition does not affect the husband because, at the time when the theory of restrictions to the actions of spouses was developed, he was responsible for administering the couple's property and because his professional activity outside the household obviously implies obtaining credit and it would be very embarrassing forcing him to get his wife's authorization or consent every time he had to sign a credit opening contract, accept a bill of exchange, issue a trade bill or a promissory note. However, article 246 of the Civil Code has lost importance in view of article 3 of Law no. 4,121/62, which establishes that the woman's assets shall not be disposed of to pay the man's debt and vice-versa.

With regard to the authorization, gender discrimination still prevails in article 178, § 7, VII, of the Civil Code and in § 9, subparagraphs I and II, which provide for a longer prescriptive time lapse with regard to women. The doctrine and the jurisprudence have not discussed the constitutionality of such articles, restricting the discussion to the articles of the Civil Code concerning family law and to article 100, subparagraph I of the Code of Civil Procedure regarding the woman's venue prerogative in relation to judicial separation and marriage annulment.

Article 248 of the Civil Code provides for the practice, by the woman, without her husband's authorization. However, the Code contains no provision establishing the acts that the husband can practice without his wife's authorization or consent.

There is discrimination against the woman who devotes herself to housework and does not exercise a profitable activity. There are several examples of such discrimination in the Civil Code, among which is the below-mentioned article 247, subparagraph I:

*"Art. 247. The woman shall be presumed authorized by the husband:*

*I – to purchase, even if on credit, the items necessary to the administration of the household".*

Under the Civil Code (article 233), the husband is still responsible for supporting the family. However, the wife's contribution to household expenses should be proportional to her own resources. When the husband is incapable of providing for his family, the woman will assume such responsibility. The law still designates the husband as the main debtor, with the exception of articles 275 and 377 of the Civil Code, i.e., only when the marriage is based on the system of separate ownership of property the woman will contribute to the couple's expenses through the earnings of her assets, and proportional to the value of such earnings in relation to that of her husband's, and also when the wife incurs debts without her husband's authorization, or, still, when such authorization is unnecessary.

However, the ***New Civil Code*** innovates (articles 1,565 and 1,568), by establishing the ***absolute equality of rights and duties between husband and wife*** and imposing on both spouses the burden of providing for the family, not only through the earnings of their assets, but also through the proceeds of their work, irrespective of the marriage system.

Once again, the legal instrument is not in tune with reality, since the woman is currently sharing the family support with her husband, not only in terms of collaboration or complementation of the household income.

In view of the above, the need to revise the marriage systems is paramount. As mentioned, such systems were based on the legal condition of the husband and the wife, especially of the latter. Under the Civil Code of 1916, these systems were based on the woman's relative incapacity and her dependence on her husband. The systems were modified by the Statute of the Married Woman, issued on 27 August 1962, which changed the woman's legal condition. In view of the Federal Constitution of 1988 (art. 226, § 5), urgent measures must be taken the change to existing marriages systems.

As for the enjoyment of rights related to property issues, a few words should be said about the so-called individual assets of women. Part of the Brazilian legal doctrine believes that such institution should be maintained, in view of the social content it embodies. It states that, if the institution were to be extinct under article 226, § 5, both the conventional and legal separation, which are based on peculiar consideration, would be equally extinct. The very separate property system would be affected, since it prescribes the existence of assets when the betrothed enter into marriage. On the other hand, if the jurisprudence accepts that the woman's property be preserved when the assets are mortgaged as a result of debt incurred for other reasons than the benefit of the wife or the family, for the same reason the husband should have the right to preserve the assets acquired with the resources stemming from his work or activity. However, this understanding is shared by the minority of the doctrine, most of which, in light of article 226, § 5 of the Constitution, affirm that article 246 of the Civil Code of 1916 has been revoked.

Further clarification is necessary with regard to article 233 of the Civil Code, which provides for the control of the marital society. This legal provision accords this control to the husband. Those who find it unconstitutional state that it is based on the harmony of the family alone, since the whole social group requires unified control to prevent instability and to ensure that daily problems can be settled based on the prevalence of the desire of one of the spouses. However, the most correct understanding is the one according to which there is no doubt that the institution of head of the household was abolished by the 1988 Constitution. Based on such understanding, the man no longer enjoys any privileges and the decisions of interest to the family are to be equally made by both spouses (article 226, § 5, of the

Federal Constitution). As a consequence, all the provisions of the Civil Code that accorded prerogatives to the husband have been revoked and differences of any nature are to be settled in court.

The Statute of the Married Woman (Law n. 4.121/62) amended the second part of article 233, establishing that the married woman should cooperate with her husband in providing for family support.

The New Civil Code establishes, in article 1,567, that "the control of the marital society shall be jointly exercised by the man and the woman, always in the interest of the couple and their children."

Worth emphasizing is the possibility of judicial intervention in the case of abuse of power. However, the system hereby described, according to which only the husband should have control over the marital society, is being adopted neither in the Scandinavian, Russian, Mexican, and Uruguayan legal systems of the Common Law nor in our Constitution and in article 1,567, single paragraph, of our Civil Code Bill. These instruments provided for a type of co-management, without marital predominance, as well as for the right to resort to a court of law, in case of disputes.

Although the Convention in question has mentioned only the rights and duties inherent to marriage, as the Federal Constitution levels marriage to stable union, for the purpose of property protection (article 226, § 3), some considerations will be made on the status of the woman who lives with a man under the Brazilian legal system.

The stable union was not legally recognized. Firstly, based on jurisprudence, it was partially recognized. The woman who had provided household or rural services to the man she lived with was ensured the right to alimony. Later on, the stable union was recognized as a *de facto* society. A revolution occurred with the promulgation of the Federal Constitution of 1988. What used to be considered as a *de facto* society was raised to the category of stable union, recognized as a family entity (art.226, § 3 of the Federal Constitution). The Constitution established three forms of family entities: civil marriage; stable union between a man and a woman; and the community established by either parent and their descendants. Laws no. 8.971 of 29 December 1994 and no. 9.278 of 10 May 1996, which regulated § 3 of article 226 of the Federal Constitution, consolidated the stable union as a legal institution.

***Item d):*** **Rights and duties of the parents in relation to their children**

Article 380, single paragraph, of the Civil Code establishes that, in case of differences, the father's opinion should prevail. However, his decision may be overruled if the mother obtains a different decision from a court of law, since the decision power of the husband is subject to judicial control.

The widow who remarried lost the right to administer the property of the underage children born out of the previous marriage, as well as to usufruct from such property. However, a new wording was given to articles 393 and 248, subparagraph I of the Civil Code by Law no. 4,121/62, which determines that the mother who remarries will not lose the right to paternal power with regard to the children of the previous marriage and can freely exercise the right to which she is entitled with regard to the persons and property of such children.

Paternal power is no longer a right to be exercised exclusively by the father with the mere cooperation of the mother, as provided for in article 380 of the Civil Code right, but rather under equal conditions by both parents, according to article 21 of the Statute of the Child and the Adolescent.

Likewise, both parents have the right to administer, under equal conditions, the assets of their children. The right of the mother is no longer conditioned to the absence of the father, as established in article 385 of the Civil Code.

As for the subject in question, there is gender discrimination in article 378 of the Civil Code: "The rights and duties resulting from natural kindred do not cease with adoption, except for the paternal power, which shall be transferred from the natural father to the adoptive father". The legal instrument refers only to the father as the beholder of paternity power.

Article 10, § 1 of the Divorce Law determines that guardianship of the children should preferably be assigned to the mother, when both spouses have given cause to the judicial separation, except where the judge decides otherwise in the interest of the child or the adolescent, in respect for one of the guiding principles of the Statute of the Child and the Adolescent (article 4), which establishes that the interest of the child or the adolescent shall prevail. This Law determines that the children "shall stay under the guardianship of the spouse that has not given cause to the separation" (article 10). However, if both spouses are responsible for the judicial separation, guardianship of the children will be assigned to the mother, except where the judge considers that such solution might bring "pain and suffering" to the children. The term responsibility has therefore replaced the term culpability, which was used by the legislation that preceded the Divorce Law.

Before the Divorce Law, the guardianship of underage children was assigned, in case of judicial separation, to the innocent spouse (article 326 of the Civil Code). However, Law 6,515/77 abolished the concepts of innocence and guilty within the family, which were impregnated with patriarchal ideology. Currently, evaluations of moral nature regarding the woman's behavior are minimized, since the interest of the child and the adolescent are paramount.

In this regard, article 1,583 of the New Civil Code establishes that, in case of dissolution of the marital society or of marital bonds through judicial separation by mutual consent or by direct consensual divorce, the parents should agree on the guardianship of their children. Article 1,584 refers to the *guardianship of the children when an agreement is not reached*, establishing that it should be assigned to the parent more capable of exercising it.

Sensitive to one of the most delicate subjects of the Brazilian social and legal reality, the legislators have established that, in the cases where the children should stay neither with the *father* nor with the *mother*, the judge should decide on such guardianship, taking into account the person's degree of kindred and affinity and affection relation.

It is also worth emphasizing that the New Civil Code changes the term *father power* to *family power*. This, in our view, has been a very significant decision, since it means eliminating a term that evokes paternal power in detriment of maternal power. Article 1,630 establishes that underage children are subject to family power. Article 1,631 establishes that the family power shall be exercised by the *parents* during marriage or stable union, and that in the lack or impediment of either one, such power shall be exercised, exclusively, by the other.

***Item e):*** **Family Planning**

In article 226, paragraph 7, the Federal Constitution establishes that family planning is a free choice of the couple, it being within the competence of the State to provide educational and scientific resources for the exercise of this right, any coercion by official or private agencies being forbidden. This constitutional provision was regulated by Law no. 9,263 of 12 January 1996.

Article 1,565, paragraph 2 of the New Civil Code adopts the concept of article 226, paragraph 7 of the Federal Constitution, by establishing that family planning is a free choice of the couple, it being within the competence of the State to provide educational and scientific resources for the exercise of this right, any coercion by official or private agencies being forbidden.

***Item f):*** **Rights and duties regarding guardianship, tutelage, trusteeship and adoption of children**

With regard to guardianship, article 414, subparagraph I of the Civil Code is discriminatory, since it allows the woman to refuse guardianship. In view of their current situation, women should not enjoy this prerogative (article 5, I of the Federal Constitution).

It is also worth recalling, as previously mentioned, that the New Civil Code insists on the discriminatory rule above, since its article 1,736 establishes that married women have the right to refuse guardianship.

Also with regard to guardianship, article 1,731, subparagraph I of the New Civil Code establishes that, in the absence of a guardian appointed by the parents, underage children shall remain under the guardianship of blood relatives, in the following order: the closest relative in detriment of the remotest. This is an innovation, since article 409, subparagraph I of the Civil Code in force establishes the following order: the father's father; the mother's father and in the absence of the latter, the father's mother or the mother's mother.

The gender differences contained in article 454, paragraph I, which refer to the absence of the legally incompetent spouse, and article 467, which refers to trusteeship of property of the absent spouse, should no longer prevail in light of the Constitution and both parents should have equal rights with regard to trusteeship.

As for placing the child and the adolescent in a surrogate family, the Statute of the Child and the Adolescent (Law no. 8,069 of 13 July 1990) establishes, in articles 28 to 52, rules that enable the exercise of guardianship, tutelage, and adoption by men and women, under equal conditions.

***Item g):* Right to choose a family name, a profession and an occupation**

Through marriage, the woman is ensured the right to add her husband's family name to her name (single paragraph of article 240 of the Civil Code). In most cases, the woman takes the husband's family name, by force of habit.

The legal equality between spouses established by the Federal Constitution (article 226, paragraph 5), led to the discussion about the possibility of the husband taking his wife's family names.

As for the name taken by the married woman, paragraphs 1 and 2 of article 5 of Law no. 6.515/77 establish that, if she loses the action for separation or files for separation she shall retake her maiden name. In all the other cases, she may choose to keep her husband's family name. However, the Divorce Law establishes that the woman must retake her maiden name, except is the cases provided for in article 25 of said law (clear hindrances regarding her identification, expresses distinction between her family name and that of the children born out of the relationship that is being dissolved, and serious damage as established by a court of law).

Finally, with regard to item *g* of the Convention, it is worth mentioning that the woman who exercises a profitable activity, different from that of her husband's, no longer needs his authorization and consent to practice all actions inherent to the fulfillment and defense of her profession. Such is the provision of article 246 of the Civil Code, as amended by Law no. 4.121/62. The new constitutional order establishes that, even where husband and wife perform the same profitable activity, the woman does not need her husband's consent and may compete with him under equal conditions.

In its article 1,565, paragraph 1, the New Civil Code establishes that either betrothed may take the other's family name, if they so wish.

Under article 1,571, § 2° the spouses may keep their married name in the case of dissolution of marriage by divorce or conversion, except as otherwise provided for in the judicial separation decree.

It is interesting to notice that, even when the spouse is found guilty in the action for separation, he will only lose the right to keep the other spouse's family name if such spouse so requires, and so long as the change does not bring severe damages to the spouse who wishes to keep the married name. This precept differs from the Divorce Law, which establishes, in article 17, that the woman who lost the action for separation should retake her maiden name.

***With regard to paragraph 2 of the Convention: minimum age for marriage***

The Civil Code establishes at 16 years for women and 18 for men the minimum age to enter into marriage and requires that the betrothed should be represented by their parents. The marriage of minors who have not reached the proper age for marriage can only be effected upon judicial authorization and for a serious reason.

All marriages are registered in an official registry, as set forth by law. According to the Convention on Marriage (UN 1962), adopted by Brazil in 1970, it is within the competence of the States Parties to adopt the necessary measures to determine the proper age to enter into marriage.

The difference between men and women with regard to the proper age for marriage is justified by biological aspects. In this case the woman's age is lower because, according to those who advocate such requirement, in biological terms she develops earlier than the man. This view, however, is not unanimous, for there are some who argue that the provision of article 183, XIII, contradicts the rule contained in article 5, I of the Constitution. They argue that the law cannot privilege the woman in detriment of equal rights to men, and vice-versa, when both are in the same legal situation.

Also important is the issue related to the parents' authorization to enter into marriage. Should the parents disagree about such decision, the father's decision will prevail. If the parents are separated, divorced, or if their marriage has been annulled, the decision of the parent who has the guardianship of the children will prevail (Article 186 of the Civil Code, as amended by Law no. 6.515/77). If the child is illegitimate, the consent of the parent who acknowledges the paternity will suffice or, if the child is not recognized, the mother's consent will suffice (Civil Code, article 186, single paragraph).

The New Civil Code, which will enter into force on 11 January 2003, provides for the need of authorization from both parents if the betrothed are under 16 years of age. Should the parents disagree about such authorization, either one is ensured the right to resort to a court of law in order to have the issue settled.

***With regard to the issue of domestic and intra-family violence:***

It is worth emphasizing that the issue of domestic and intra-family violence against women and girls is dealt with in the comments on articles 1 and 2 of the Convention.

**State Constitutions and legislation**

Sixteen State Constitutions[154] and the Organic Law of the Federal District provide for the ***equality of all without distinctions of any nature***. Of these, the Constitutions of Bahia, Amapá, Ceará, Pará and the Organic Law of the Federal District expressly provide for equal rights to women, including through the adoption of state-level measures aimed at ensuring such rights.

Contrary to the provisions of the Federal Constitutions, some State Constitutions contain sexist provisions and establish a difference between men and women by using the term "man" as a synonym to "human being" or "human person". These Constitutions are that of Amazonas, which includes, among the State's priority objectives, settling **man** in the country and ensuring an educational system that, by respecting **man's** universal and national dimension, preserves and emphasizes the cultural identity of the people of the State of Amazonas; that of Paraíba, which provides for the establishment of a State Council for the Defense of the Rights of **Men** and Citizens; that of Piauí, which ensures the **female** widows of former mayors the right to pension; and finally, that of São Paulo, which ensures the **mother** the right to accompany her children under 12 years of age when they are hospitalized.

[154] Amapá, Bahia, Ceará, Espírito Santo, Goiás, Mato Grosso, Minas Gerais, Pará, Paraíba, Paraná, Piauí, Rio de Janeiro, Rio Grande do Norte, Roraima, Santa Catarina and Sergipe.

With regard to equality in marital relations, the Constitution of the State of Amazonas establishes that the rights and duties inherent to marital society will be equally exercised by the man and the woman, including with regard to the registration of their children. In the same regard, the Constitutions of the States of Rio de Janeiro and Rondônia establish that the rights and duties related to marital society shall be equally exercised by the man and the woman.

With regard to the responsibility for the children's education, the Constitution of the State of Bahia establishes that as set forth by law, *the family shall be protected by the State, which, either by itself or in cooperation with other institutions, shall maintain programs aimed, among other things, at ensuring the recognition of motherhood and fatherhood by the State as relevant social functions, ensuring parents the necessary means to have access to day-care centers as well as to education, health, nourishment and security for their children.* The Constitution of the State of Sergipe provides for equality between fathers and mothers by establishing that *the parents have the duty to assist, raise, and educate their underage children and that the adult children have the duty to assist and support their parents in old age, need or infirmity.*

***With regard to article 16, paragraph 1, item "d" of the Convention,*** it is worth emphasizing that some State Constitutions show unequal expectation in relation to the responsibilities of mothers and fathers regarding the care for their children. In this regard, comments have already been made in articles 5, 7, and 15.

As already mentioned in the comments on article 12, virtually all the State Constitutions[155] provide for family planning, with the exception of the Constitutions of the States of Acre, Alagoas, Minas Gerais, Piauí, Rondônia and Sergipe. The majority of the Constitutions that deal with the subject[156] determine that family planning is a free choice of the couple. The Constitution of the State of Goiás establishes that family planning should be exercised by the *man and the woman*. The Constitution of Rio de Janeiro establishes that family planning is within the competence of the *woman, the man or the couple,* in this order. The Constitution of São Paulo, in turn, establishes that family planning is within the competence of the *man, the woman and the couple*, also in this order. The Constitution of Pará assigns such competence to the *family*.

The Constitutions of the States of Bahia, Goiás, Pará, Rio de Janeiro, Roraima and Sergipe clearly provide for the use, study and inspection of contraceptive methods. Among these, special mention should be made to the Constitution of Bahia, which includes in the chapter on women's rights the encouragement to research aimed at improving and expanding the domestic production of contraceptive methods for men and women that are safe, efficient and not harmful to health and expressly prohibits every and any experiment in human beings involving drugs and contraceptive methods that are harmful to health and are neither fully known by users nor inspected by the competent authorities.

The Constitution of the State of Rio de Janeiro also provides for the possibility of adopting new practices relating to the right to reproduction, upon consideration of experiences carried put by groups or institutions engaged in the protection of women's health. The Constitutions of the States of Amapá, Ceará, Pernambuco, Roraima and São Paulo and the Organic Law of the Federal District include sex education in the curricula of primary and secondary schools.

**Governmental Actions**

The governmental actions aimed at eliminating discrimination and violence against women, especially domestic and intra-family violence by means of public policies, are dealt with in the comments on articles 1 and 2 of the Convention.

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155 Amapá, Amazonas, Bahia, Ceará, Espírito Santo, Goiás, Maranhão, Mato Grosso do Sul, Pará, Paraná, Paraíba, Pernambuco, Rio de Janeiro, Rio Grande do Norte, Rio Grande do Sul, Santa Catarina, São Paulo.

156 Bahia, Ceará, Espirito Santo, Mato Grosso do Sul, Pernambuco, Rio Grande do Norte, Rio Grande do Sul, Santa Catarina and Federal District.

**Judicial Measures**

According to the Federal Constitution, the competence to evaluate breach of or threat to a right is within the Judicial Branch. This principle is reinforced through many other rules on rights, which seek to ensure equal rights to all by according them substantial social rights.

However, some remaining gender, class and race prejudices influence the Judicial Branch, sometimes against women. Moral concepts such as "honest woman", "innocence of the victim" and "good mother" are still used to define issues such as separation of spouses and guardianship of children, marital violence, and sex crimes.

The forms of discrimination that still persist are due to cultural patterns that exist in society and, as we know, are complex and resistant to change.

Therefore, the full implementation of the rights of Brazilian women is conditioned to the incorporation, by the Judicial Branch, of the equal and democratic values contained in the Constitution of 1988.

With the aim of assessing the way women's rights are being implemented by the Judicial Branch, surveys of judicial proceedings in the family area show that *sentences have a dynamics of their own and contradictory movements and therefore make up a heterogeneous universe, pervaded by advances and setbacks*. In general, the judicial discourse reveals a double morality with regard to the behavior requirements imposed on women, since their behavior is evaluated in light of an adjustment to certain social roles in which the actions of men and women have different weights.[157]

Despite the modern trend towards soothing established forms of discrimination, there is no uniformity in the judgments issued in the country in relation to the cause of marriage annulment by reason of ***error virginitatis*** (the man's unawareness about the fact that the woman was no longer a virgin).

On the one hand, most sentences lead to the inapplicability of article 219, subparagraph IV of the Civil Code in force until 10 January 2003, as follows:

*"In view of the express constitutional provision that ensures equal rights to men and women, it is no longer possible, under our legal and civil system, to annul marriage on the grounds of the alleged unawareness of a woman's deflowering. Considering that it is not possible to verify a man's virginity, requiring it from women would constitute unequal treatment" (RF 327/204 e RT 711/172).*

On the other hand, the maintenance of such legal provision still gives rise to court sentences that lead to its application, such as the one mentioned below, issued by the Court of Appeals of the State of Espírito Santo, in 1998:

*"Ex-officio Appeal. Action of marriage annulment. The husband was unaware of the fact the woman had been deflowered. Essential error upon the person of the other spouse. Legal basis. Appeal denied.*

*1 – Demonstrated on the records through the result of carnal knowledge examination that the woman had been deflowered and that the man was unaware of such fact, the marriage is hereby annulled, as provided for in articles 218 and 219, subparagraph IV of the Civil Code, on the grounds of essential error upon the person of the spouse, since the action was filed within ten days of the wedding.*

*2 – Appeal denied. Unanimously." (TJES; District: Alegre; Necessary Re-examination no. 2979000136; Rapporteur: Chief Judge José Eduardo Grandi Ribeiro; Sentence: 30/06/98; v.u.).*

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157 PIMENTEL, Silvia, DI GIORGI, Beatriz and PIOVESAN, Flavia. *The figure of Women in Family-related Proceedings*.. Sérgio Fabris Ed., São Paulo, 1993.

There also sentences favoring the ***adoption of the woman's last name by the man,*** as shown in the below-mentioned judgment:

*"NAME – CIVIL REGISTRY – Use, by the husband, of his future wife's family name. The Federal Constitution of 1988 provides for equal rights and duties between men and women. The request is legally possible. (TJSP – 1st Civil Appellate Court ; Civil Appeal no. 198.349-1/7 – Lins; rapporteur: Chief Justice Guimarães e Souza; j. 03.08.93; majority of votes)".*

With regard to women's access to the Judiciary, it is worth emphasizing that women may file for separation, its conversion into divorce, and marriage annulment, with venue prerogative. Subparagraph I of article 100 of the Civil Code establishes that the woman's place of residence shall be the appropriate venue for filing the aforementioned actions.

Much has been discussed about the validity of art. 100, I, of the Civil Process Code bearing in mind the text of art. 5.º, subparagraph I, that states equality regarding gender in the same terms used in the constitutional text. The doctrine and jurisprudence show themselves divided regarding this issue but with prevalence for the constitutionality of the aforementioned norm.

*"The special rule of competence does not contradict the constitutional principle of equality (Federal Constitution, article 5, subparagraph I) and is not incompatible with the equality between spouses in conducting marital society (Federal Constitution, article 226) (RJTJSP 143/283, 132/279)".*

*"AGE - Authorization - Article 124 of the Civil Code and the new Federal Constitution are sufficient legal bases to authorize the marriage of persons under eighteen years of age, since the new Constitution prohibits the law from establishing gender discrimination. (TJRS - Appeal 589.007.053-1 CC – Rapporteur: Chief Justice Milton dos Santos Martins - j. 18.4.89-m.v.)"*

Special mentions should also be made to the ***"Conversion of separation into divorce c.c. revision of provisions contained in the separation agreement*** ", which seeks to adopt the principles of equality and non-discrimination provided for in the present Convention:

***AAA***, *.. filed an action of Conversion of Judicial Separation into Divorce c/c Revision of provisions contained in the separation agreement, against* ***BBB***, *under the allegation that she has been separated from the required party for over two years, as per agreement homologated in the Special Court... through sentence issued on 8 March 1996.*
*The petitioner stated her intention to revise clause... of the separation agreement, which established that the guardianship of the couple's children would be granted to the petitioner, provided that she did not move out of the town of..., in which case the guardianship would be transferred to the father, since she considers that such clause violates her right to move, which is guaranteed by the constitution. She also intends to have the amount of alimony revised(...).*
**Such is the report. DECISION.**
*The present action refers to the conversion of Judicial Separation into Divorce, in which the petitioner argues the validity of item...of the separation agreement homologated in the Special Civil Court of..., when both the petitioner and the required party agreed that their children,* ***CCC*** *and* ***DDD*** *would be under the guardianship of the mother, provided that she did not move out of the city of ..., in which case the guardianship would be transferred to the father. The petitioner also requests a revision of alimony, in view of the increase in the children's usual expenses.*
*A simple reading of the clause argued by the petitioner leads to the conclusion that it hinders the petitioner's freedom, since it prevents her from residing wherever she finds more convenient to herself and her children, whose guardianship she has been granted. Under this perspective, it is worth emphasizing that the aforementioned "agreement" and the arguments presented by the required party contain strong* **discriminatory content against women.** *This fact needs to be repelled in light of the correct interpretation of the actual meaning of* **articles 5, subparagraph I, and 226, paragraph 5, of the Federal Constitution**.

**In fact, in the current times, the feminine forces have gained contours of equality with relation to me especially with regard to family relations, where women exercise, under equal conditions with men, the m different professions, in addition to caring for their children and doing housework.**
In view of this socio-political reality, the Federal Constitution established equal rights and obligations between m and women (article 226, paragraph 5). Therefore, vis-à-vis this new concept of social life, there is no place for macho behavior adopted by the required party, who insists on imposing on the woman unproven disqualification, to extent of proposing, in an agreement hearing, the permanent presence of an "inspector" to monitor the routine acts the children and proposed the return, to this Capital, of the petitioner, who was only able to move as a result of attached writ of prevention (...).
*Therefore, considering the petitioner's right to come and go as well as to settle wherever she finds more convenien hereby decide to welcome the reasons that led the petitioner to move to ..., in order to comply with logic, recognize socio-political evolution and, mainly, the rules on human rights.*

*It is worth recalling that* **the 1979 convention on the elimination of all forms of discrimination against women signed by Brazil, with reservations regarding the section on family, on 31 March 1981, and ratified by National Congress on 1st February 1984. In 1994, as the Federal Constitution of Brazil recognized the equa between men and women in the public and private life, particularly with regard to marital relations, Brazilian government withdrew such reservation: hereby ratifying the Convention in its entirety.** *In Brazil, international instrument has the force of domestic law, as provided for in paragraph 2, article 5 of the Fed Constitution in force.*
*And there is more:* **The Inter-American Convention of the Prevention, Punishment and Eradication of Viol against Women was adopted by the General Assembly of the Organization of American States (OAS) on 6 J 1994 and ratified by Brazil on 27 November 1995.** *In Brazil, this international instrument has the force of dom law, as provided for in paragraph 2, article 5 of the Federal Constitution in force (...) I therefore consider that al issues under examination have been settled (...) The request submitted by ... to* ***convert the Judicial Separation Divorce is hereby GRANTED.***
*In view of the fact that clause... of the separation agreement contradicts constitutional provisions and harms the hu dignity,* ***I hereby decide that ..... shall remain under maternal custody,*** and that the father can visit them whenever possible for him to travel to the city where....reside, and to keep them during school vacations (...). **I HAVE A DECIDED TO WELCOME THE REQUEST FOR REVISION OF ALIMONY**, which is hereby fixed percent of the required party's net remuneration,
*P.R.I. Cuiabá, 12 February 2.001.* **Clarice Claudino da Silva. Juíza de Direito.**

**Factors and Difficulties**

In general, the Federal Constitution and the State Constitutions have only acknowledged equality in its formal meaning: ***equality before the law.***[158] Formal equality consists in a "principle of action, according to whic beings of a same essential category should be treated alike. The term "equality before the law", which means eq as set forth by law, is aimed at both lawmakers and law enforcers.[159]

The Federal Constitution of 1988 was undoubtedly a mark in the legal achievement of women's However, it was not followed by the necessary, effective and appropriate infra-constitutional regulation. Likewis due adjustments in domestic laws resulting from political commitments undertaken by the Brazilian government most relevant International Conferences of the United Nations, failed to be introduced. The same happened commitments legally undertaken as a result of the ratification by Brazil, particularly in the 1990s, of interna human rights treaties, especially women's rights, with emphasis on the Convention on the Elimination of All Fo Discrimination Against Women (*Convention on Women, UN 1979*), ratified by Brazil in 1984, and the Inter-Am Convention for the Prevention, Punishment and Eradication of Violence against Women (*Belém do Pará Conv* OAS, 1994), ratified by Brazil in 1995.

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158 SILVA, José Afonso da. *Curso de Direito Constitucional Positivo.* Ob. cit. p. 241.
159 *Ob. cit. p. 216.*

With regard to the promotion of material equality between men and women, as provided for in articles 15 and 16 of the Convention, much remains to be done on the plane of development and reform of the ***infra-constitutional legislation***, as well as in the area of implementation of ***public policies*** and ***judicial measures***.

The regulation of marriage by several of our civil and criminal laws – both dating from the beginning of the 20th century – contradicts the principle of gender equality provided for in the Federal Constitution and in international treaties on the protection of the human rights of women.

The gender discrimination contained in the Civil Code in force relates mainly to married women, since it establishes an unequal and discriminatory condition regarding the role of women in marital life and, consequently, in society.

Notwithstanding the promulgation of the Federal Constitution of 1988, the articles of the Civil Code that contradict the principle of equality, such as those on: the domicile of married women; the disinheriting of the dishonest daughter who lived in her father's house; the control of marital society by the man; the supremacy of the father with regard to paternal power and the administration of the couple's property by the man, including the woman's individual property and, also, the annulment of marriage by the man on the grounds that the woman was no longer a virgin.

As an example, the penal legislation also harms women's dignity and the principle of equality by providing, for example, for the extinction of punishment in case of sexual offense, when the offender marries the victim or when, in certain circumstances, she marries a third party. Marriage is, therefore, in these cases, a way to repair or preserve the honor of the woman victim of sexual violence.

These are just a few examples of the discrepancy that exists in the infra-constitutional regulation, which is out of tune with principles of equality between men and women. They contradict both the Federal Constitution of the country and the international laws on the protection of human rights.

It is therefore necessary that the revision of the Brazilian legal system be completed, in the sense of eliminating, from the Civil and Penal Codes, discriminatory gender provisions that harshly affect the rights of women.

With a view to providing a clear picture of the historical moment the country is going through, this Report has sought to present a detailed study on the Civil Code still in force, which indicates the long-lasting persistence of discriminatory provisions that insist on pervading the Brazilian laws, even after the promulgation of the Federal Constitution of 1988. In this regard, an important mark will be the entry into force (on 11 January 2003) of the country's ***New Civil Code,*** which will expressly revoke most of the discriminatory precepts against women, particularly those related to the equality between men and women in marital society. With regard to the criminal scope, the ***Bill on the Revision of the Special Section of the Penal Code*** developed by the Executive Power, is still pending examination by the National Congress.

The adoption of the aforementioned legislative reforms and the effective implementation of women's rights through consistent global public policies, as well as the permanent and continuous promotion of governmental programs aimed at training public agents, law operators and law enforcers, especially with relation to gender and human rights, with emphasis on the discrimination and violence against women, contribute to the effective implementation of the CEDAW provisions in Brazil.

The challenge of implementing the Convention involves, therefore, the ***actual understanding and the social and regulatory incorporation of women's rights as human rights***, and therefore implies, necessarily, ***changes in cultural values and practices***. It also involves the actual ***understanding and incorporation of the new paradigm of social justice and equity into the internal political-legal and socio-economic system***, so that, on ***the legal plane, as well as on the plane of public policies and law enforcement***, the principles of equality and non-discrimination called for in the present Convention can be appropriately implemented.

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